

THE COMPLEAT
Justice of the Peace,
AND
PARISH OFFICER;
SHEWING

The Authority and Power of a Justice of the Peace, the original Institution thereof, with the Commission at large, and the Alterations and Amendments that have from time to time been made therein; the Manner and Order of proceeding in the General Quarter-Sessions and Special Sessions.

The Office and Duty of a

Coroner, Churchwardens, Overseers of the Poor, Vestry and Vestry-Clerk, and other Ward and Parish Officers; Appeal to the Sessions, and the Form thereof; also of Settlements, Informations, Indictments in capital and other Offences, with an Account of Accessaries before and after the Fact; the Laws of Highways, Landlords and Tenants, Masters, Apprentices and Servants, Game, and Gaming-Houses, Inns, Innkeepers, Musick Houses.

To which are added,

The most useful Precedents of Warrants, Commitments, &c. With Notes and Observations according to the Statute and Common Laws of this Kingdom, digested under proper Titles in Alphabetical Order, purposely for the Use of Justices of the Peace, Mayors, Town-Clerks, Coroners, and all Officers of Parishes; with a Continuation of all the Statutes to the End of last Sessions of Parliament.

With a proper TABLE to the Whole.

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THE COMPLEAT
Justice of the Peace,
 AND
 PARISH OFFICER.

**Of principal and accessaries
 in felony at common law.**

IN treason there are no accessaries, but all principals, as commanders, aiders, receivers and counsellors; but in felonies they be but accessaries; howbeit if any command one to kill another, and the commander himself be at the deed doing, he is a principal.

In treason there are no accessaries, but all principals.

One that is present and aiding to the stabbing of another, is but an accessary within the act of 1 Jac. 1. And there cannot be an accessary before the fact in manslaughter, by reason it is done on a sudden and not premeditated.

No accessaries before the fact in manslaughter.

If the owner of goods stolen, after a complaint to a justice, take his goods, and con-

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sent

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sent to the escape of the felon, or compound the offence, it is said he may be accessary after the fact; but it is otherwise, if done before such Complaint made. *Lambard.*

If an indictment be against a man for an accessary, the name of the principal must be set down; so also the accessary, in case the principal be indicted for that offence, else it is not good; and therefore if the indictment that *A.* commanded a certain unknown man to kill *B.* which he did, this is void. But in case of treason, trespass or maim, where all are principals, it may be good, *quod procuravit personas ignotas* to do the act. As in personal actions, so in indictments, presentments, &c. the day and year when the offence was done, and sometimes the hour, must be certainly set down, as the 10th of *March*, the year of our Lord, &c. now, or the indictment will not be good: for if a man be hurt above a year before, it is no felony; and for a trespass against penal statutes the offence must be done within a certain time before. *Stat. 13 Eliz. c. 5. 2 Inst. 4.*

Therefore if any felony or trespass be laid by indictment to be done, and no time set down when it should be done, or if it be the 10th of *March*, without saying in what year, it is vicious. *Brook Indictment 41.*

The indictment of the accessary in one county to a felony in another county, by the stat. 2 *Ed. 6. c. 24.* shall recite, that the felony was done in another county; for an indictment is no direct affirmation of the fact.

9 *Rep. 117.*

Of

Of principals and accessaries in felony; and first of accessaries before the fact.

Having gone through the considerations of offences of treasons, and also of felonies at the common law, it will be reasonable in this place to consider of those different relations of principals and accessaries, whereof so much hath occasionally been mentioned; yet I shall now proceed to the discussion distinctly and apart, and shall put together all the learning that occurs to me concerning this matter.

In the highest capital offences, namely high treason, there are no accessaries, neither before nor after, for all consenters, aiders, abettors, and knowing receivers and comforters of traitors, are principals, as hath been said. 3 H. 7. 10. *Stamf. P. C. p. 40.*

Principal and accessaries,
how to be understood.

But yet as to the course of proceeding it hath been and ought to be the course, that those who did actually commit the very fact of treason should be first tried, before those that are principals in the second degree, because otherwise this inconvenience might follow, viz. that the principals in the second degree might be convicted, and yet the principals in the first degree may be acquitted, which would be absurd. *Vide Sommerville's Case.*

In cases that are criminal, but not capital, as in trespasss, mayhem or *præmunire*; there are no accessaries, for all the accessaries before are in the same degree as principals. *Stamf. lib. 1. ca. 48.* And accessaries after,

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by receiving the offenders, cannot be in law under any penalties as accessaries, unless the acts of parliament that induce these penalties do expressly extend to receivers or comforters, as some do.

Note; The word *maintainers* in the stat. 27 Ed. 3. c. 1. 16 R. 2. c. 5. denotes the maintainers of the offence, and not (as it seems) of the parties.

It remains therefore, that the business of this title of principal and accessory refers only to felonies, whether by the common law or by act of parliament.

As to felonies by act of parliament, regularly, if an act of parliament enact an offence to be felony, though it mentions nothing of accessaries before or after, yet virtually and consequentially those that counsel or command the offence are accessaries, and those that knowingly receive the offender are accessaries after, as in case of a rape made felony by the statute of *Westm. 2. c. 34. Stamford. P. C. lib. 1. c. 47. 1 And. 109.* But it was ruled in that Case, that upon the branch of treason which relates to the compassing the death of the king, there is no need that the principal in the first degree, viz. he who undertook to do the act, should be first tried, for the movers or procurers are guilty of compassing the death of the king, altho' he that was procured should never assent thereunto. *Co. Inst. 434.*

But if the acts of parliament that make the felony, in express terms comprehend accessaries before, and make no mention of accessaries after, namely receivers or comforters,

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ters, there, it seems, can be no accessaries after, for the expression of procurers, counsellors, abettors, all which import accessaries before, make it evident that the law-makers did not intend to include accessaries after, which is an offence of a lower degree than accessaries before, as the stat. 8 H. 6. c. 12. for stealing of records, &c. stat. 33 H. 8. c. 8. *Stamf. P. C.*

It is true my Lord Coke, *P. C. c. 19.* denies the opinion of *Stamford*, and affirms that though the statute of 8 H. 6. c. 12. mentions only accessaries before, yet virtually and consequentially accessaries after are included, as well as in felonies at common law; but he neither alledgeth any reason or authority for that opinion; and therefore the authorities being equal, the greater reason seems to be with *Stamford's* opinion, *expressum facit cessare tacitum*, and no weight can be laid upon the stat. 3 H. 7. c. 2. for that in express terms makes accessaries before and after to stand as principals. And upon the same reason it is, that many acts of parliament mentioned before, c. 22. p. 236. that make certain offences, their counsellors, abettors and procurers, to be treason, do not extend to make receivers guilty of treason; though if the act had been general, that such an offence shall be treason, it had consequentially made knowing receivers, as well as abettors, guilty of treason. *Vide Co. P. C. c. 64.*

Though generally, an act of parliament creating a felony renders consequentially accessaries before and after within the same penalty, yet the special penning of the act of

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parliament in such cases sometimes varies the case.

The statute of 3 H. 7. c. 2. for taking away maidens, &c. makes the offender, and the procuring and abetting, and wittingly receiving, also to be equally principal felonies, and excluded of clergy.

And thus much as to accessaries to felonies made by act of parliament, which being general directions, may be applicable almost to all cases.

Accessaries after the fact.

This kind of accessaries after the fact is, where a person knowing a felony to be committed by another, receives, relieves, comforts or assists the felon.

This, as hath been said, holds place only in felonies, and those felonies, where by the law judgment of death regularly ought to ensue; therefore there is no accessory in petit larceny, homicide *per infortunium*, or homicide *se defendendo*. 15 Ed. 3.

I shall consider, first, what shall not be a receiving or relieving to make an accessory after; and, secondly, what shall be such a receiving or relieving to make an accessory after.

If *A.* knows that *B.* hath committed a felony, but doth not discover it, this doth not make *A.* an accessory after, but it is a misprision of felony, for which *A.* may be indicted, and upon his conviction fined and imprisoned.

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If *A.* sees *B.* commit a felony, but consents not, nor yet takes care to apprehend him, or to levy hue and cry after him, or upon hue and cry levied doth not pursue him, this is a neglect punishable by fine and imprisonment; but it doth not make *A.* an accessary after. *Stamf. P. C. lib. 1. c. 45.* And the contrary opinion of some old books in this case is therefore rejected.

If *B.* commit a felony, and come to the house of *A.* before he be arrested, and *A.* suffer him to escape without arrest, knowing him to commit a felony, this doth not make *A.* an accessary; but if he take the money of *B.* to suffer him to escape, this makes him an accessary. *9 H. 4. 1.* And so it is, if *A.* shut the door of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, this makes *A.* accessary; for here is not a bare omission, but an act done by *A.* to accommodate his escape. *8 Ed. 2. Coron. 427.*

A. hath his goods stolen by *B.* if *A.* receives his goods again, simply without any contract to favour him in his prosecution, this is lawful; but if he receives them upon an agreement not to prosecute, or to prosecute faintly, this is theft-bote, punishable by imprisonment and ransom; but yet it makes not *A.* an accessary. *42 Affise, 3 Hen. 3. Stamf. P. C. fo. 40.*

But if he take money of *B.* to favour him, whereby he escapes, this makes him accessary. *Dalton 263. Crompton 41.*

A. hath his goods stolen by *B.* who sells them to *C.* upon a just value; though *C.*

B 4

know.

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know them to be stolen, this makes not C. accessary, unless he receives the felon. *Dalton*, c. 108. p. 288.

But by some opinions, if he buy them at an under value, it makes him accessary; *per Crompt.* 43. But it seems this makes not an accessary; for if there be any odds, he that gives more, benefits the felon more than he that gives less than the value; but it may be a misdemeanour punishable by fine and imprisonment, and the buying at an under value is a presumptive evidence that he knew they were stole, but makes him not accessary.

If A. hath his goods stolen by B. and C. knowing they were stolen receives them, this simply of itself makes not an accessary, and therefore it hath been often ruled, that to say J. S. hath received stolen goods knowing them to be stolen, is not actionable, because it imports not a felony, but only a trespass or misdemeanour punishable by fine and imprisonment; for the indictment of an accessary after is, that he received and maintained the thief, not the goods, by the stat. 3 & 4 W. & M. c. 9.

Receivers of stolen goods, knowing them to be stolen, are deemed accessaries after the fact, and suffer as such; but because these receivers often concealed the principal felons, and thereby escaped being punished as accessaries, therefore the stat. 1 Ann. c. 9. says, that whosoever shall buy or receive stolen goods, knowing them to be stolen, may be prosecuted for a misdemeanour, and punishable by fine and imprisonment, though the principal

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principal felon be not convict; and this shall exempt them from being punished as accessaries, if the principal shall afterwards be convicted.

But this law is since altered; for by the stat. 5 Ann. c. 31. it enacts, that if any person shall receive or buy knowingly any stolen goods, or knowingly harbour or conceal any felon, he shall be taken as accessary to the felon, and shall suffer as a felon. This statute does not take away the benefit of clergy; but by the 4 Geo. 1. c. 11. such person may be transported for fourteen years. But because this was difficult to prove, the confederates of such thieves frequently disposing of such goods to the owners for a reward, under the notion of helping them again to their stolen goods, it is provided by the 4 Geo. 1. c. 11. that whosoever shall take a reward under the pretence of helping any one to stolen goods, shall suffer as a felon, as if he himself had stolen the said goods, unless he cause such felon to be apprehended, and brought to trial, and give evidence against him. Upon this clause the famous *Jonathan Wild* was convicted and executed. 10 Geo. 1.

An indictment may suppose part of the offence to be done in one county and part in another, and yet good.

If a man relieves or assists any one, knowing that he hath committed a felony, and persons furnishing others with weapons, finding a horse for his journey, or relieving him with money, victuals, &c. will make them accessary: 1 Inst. 51. *Hale's P.C.* 218, 219.

An

Affidabit.

An accessory cannot be guilty of petit treason, where the principal is guilty of murder, for *accessarius sequitur naturam sui principalis*.
3 Inst. 139.

See Treason.

Affidabit.

Affidavit of burying in woollen.

J. W. of the parish of *S.* in the county of *J. M.* maketh oath, that the body of *R. T.* late of the parish of *I.* which was buried at *F.* was not wrapt in, or put into any suit, sheet or coffin lined, faced or covered with any materials, but what was made of sheep's wool only, according to the direction of an act of parliament, intituled, *An act for burying in woollen*. Dated the 25th day of *October* in the year of our Lord 1751.

Sworn before me

Witness

Stat. 30 & 31
Car. 2.

This affidavit must be brought to the minister of the parish where the person was buried, within eight days, under the penalty of 5*l.* to be paid out of the goods of the deceased, or in default thereof, of the person in whose house the party died, or of such persons who were concerned in putting on such shirt, &c. contrary to the act.

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If the deceased person was a servant, then the forfeiture shall be paid by the master or mistress; if a child, shall be paid by his parents.

A justice of the peace forfeits 5*l.* for neglect.

Where no justice of the peace is in the same parish, then parsons, vicars, &c. not of the same parish, may take affidavits of burying in woollen.

Parsons, vicars, curates, &c. to give notice in ten days of the burials of persons from other parishes, on pain of 5*l.* Stat. 7 & 8 W. 3.

The method of licensing alehouses.

THE justices of the division, before they proceed to licensing of alehouses, must issue a precept to the high constable of such division under their hands and seals, or under the hands of any two of them, to the effect following, *viz.*

To R. M. high constable of the division of C. in the county of C.

C. to } **B**Y virtue of the statutes in that
wit, } case made and provided, these
are in his majesty's name to require you,
upon sight hereof, to issue out your warrants
to all petty constables and tithing-men be-
longing

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longing to the several parishes and tithings within your hundred, requiring them to give present notice to all licensed inn-keepers and alehouses, and licensed brandy sellers (*Quere,* as to brandy sellers, I apprehend they must be licensed by the commissioners) within the limits of the excise, or other retailers of distilled liquors to be drank in their houses, within their several precincts, personally to appear before us at the dwelling-house of known by the name or sign of in on the day of at eleven of the clock in the forenoon of the same day, to renew their licences for the year ensuing, under the penalty of 20 s. a-piece for their neglect, and there enter into recognizances with sufficient sureties, according to the statutes in such case: and the said petty constables and tithing-men are to make their returns to us in writing, containing the names of all such persons as they have summoned to appear before us as aforesaid; and also the names of all such persons as have commonly sold ale, beer, perry or cyder, or any distilled liquors by retail, to be drank in their houses, within their precincts, without lawful licence, or such persons, whether licensed or unlicensed, as do suffer playing at cards or dice, shuffle-board, skittles, or any other unlawful games; which return they are to bring to us under their and their churchwardens hands; and they are to give notice to the said ale-house-keepers and brandy sellers, that this is our general meeting for this division; and you

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you are to be then present to make your return of your due execution hereof. Given, &c.

At the day appointed for such general meeting one of the clerks makes a general caption, and thereunder inserts the names of all such persons and their sureties, as there appear, in manner following:

C. to wit, } **B**E it remembered, that on the
day of _____ in the year of our
Lord _____ the persons whose names are here-
under written personally came before us *T. P.*
H. A. and *B. H.* esquires, justices of the peace
for the said county, and entered into recogni-
zances to our sovereign lord the king, as
follows ;

1.

<i>A. B.</i> of	victualler,	10	} upon con- dition written.
<i>C. D.</i> of	yeoman,	5	
<i>E. F.</i> of	yeoman,	5	

G. H. of	victualler,	10	} upon the like con- dition.
J. K. of	yeoman,	5	
L. M. of	yeoman,	5	

The condition of these recognizances are such, that whereas the above bounden persons are licensed to keep common inns and alehouses for one year, on until the next general renewal of licences for the hundred of _____ in the houses where they now dwell: Now if any or either of them shall keep good order and government, and shall suffer no disorders or unlawful games to be used in their houses, during the term of their licences,

3 & 6 Ed. 6. ces, then these recognizances shall be void,
c. 25. or else to remain in full force.
Two justices.

Taken and acknowledged
the day and year above
written,

T. P.

J. H.

Note; No licences are to be granted but on the 21st of *September* yearly, and for one year only, and by the justices acting for the division, &c. See the statute, fo. 25.

These recognizances are returned to the clerk of the peace at the next general quarter-sessions, after which the licences are made out to the effect following, viz.

A licence to keep an alehouse.

Middlesex. **A**T a general meeting of his majesty's justices of the peace for the county of *Middlesex* acting in *F.* division in the county aforesaid, holden at *C.* in and for the same division, the day of *September* in the year of our Lord 1754, and in the 27th year of the reign of our sovereign lord *George* the second, king of *Great Britain*, &c. We his majesty's justices of the peace for the said county, whose hands and seals are hereunto set (whereof one is of *quorum*) assembled at the said general meeting, do allow and license *W. R.* at the *White Lion* in *St. J. S.* in the parish of *J.* within the division and county aforesaid, to keep a common alehouse or victualling-house, and
to

to utter and sell victuals, and other liquors to be drank in the same house wherein he now dwelleth, in the parish aforesaid in the same division and county, and not elsewhere, until the next general licensing of inn-keepers and alehouse-keepers for the said division, so as the true affize in bread, beer, ale, and other liquors hereby allowed to be sold, be duly kept, and no unlawful game or games, drunkenness, or any other disorder, be suffered in his house, out-houses, yards, garden or backside, but that good order and rule be maintained and kept therein, according to the laws of this realm in that behalf made and provided; for the due observance by the person hereby licensed, a recognizance is now entered into pursuant to the statute in such case made; the tenor of which recognizance, and the condition thereof, is to the effect hereunder subscribed. Given under our hands and seals the day and year above written.

By the 16 Geo. 2. the seal must be affixed, the word *quorum* repealed.

WHEREAS the above named *W. R.* is allowed and licensed by two or more of his majesty's justices of the peace to keep a common alehouse or victualling-house, and to utter and sell victuals, beer, ale, and other liquors to be drank in the same house wherein he now dwelleth, in the parish aforesaid in *E.* division in this county, and not elsewhere, until the next general licensing of inn-keepers and alehouse-keepers for the said division:
Now

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Now the condition of this recognizance is such, that if the said *W. R.* shall, during the continuance of the said licence, keep true assize in uttering of bread, beer, ale, and other liquors hereby allowed to be sold, and sell bread according to the assize, and not otherwise, and shall not have, permit or suffer any playing at cards, dice, tables, quoits, loggets, bowls, or any other unlawful game or games, in his house, out-house, yard, garden or backside, nor suffer any person to become drunk, or remain in his house tippling or drinking contrary to law; nor suffer any other disorder to be committed therein, but to maintain and keep good order and rule in the same according to the laws of this realm in that behalf made and provided; then this recognizance to be void, or else to remain in full force.

Examined by *W. P.* clerk of the peace for the county of *M.*

Upon these licences being signed and sealed as aforesaid, the commissioners or collectors of excise within their respective divisions may grant licences (to the persons so licensed) to sell spirituous liquors, on payment of 20s. by 16 *Geo. 2.* and persons selling spirituous liquors without such licence, forfeit the sum of 10 *l.* or suffer two months imprisonment, and to be put to labour.

Spirituous liquors need not now be in the licences for alehouses, for that is taken away by the statute, and must be licensed by the Excise.

See *Thefts and Robberies.*

Justices

Justices licensing alehouses, inns, &c. to take a recognizance in the sum of 10*l.* and two securities in the sum of 5*l.* a-piece, or one security in 10*l.* under the usual condition for maintenance of good order: and in case of sickness or other reasonable cause to attend the meetings of the said justices, then to grant such licence upon two sufficient securities entering into a recognizance, each in 10*l.* such recognizances to be sent to the respective clerks of the peace to be filed; and for every such licence granted with taking such recognizance, and not sent to and returned, every justice signing such licence forfeits 3*l.* 6*s.* 8*d.*

Licences not to be granted to any not licensed the preceding year, unless such person produce at the general meeting of the justices in *September*, a certificate under the hands of the parson, vicar or curate, and the major part of the churchwardens and overseers, or else of three or four substantial house-keepers of such parish where such alehouse is, setting forth that such person is of good fame and sober life and conversation.

Licensed person dying or removing, the successor, upon obtaining such certificate, may keep on the house for the residue of the term of such licence, on condition that such person within thirty days after such death or removal obtain such certificate, to be signed by some neighbouring justice, to be produced at the next general meeting in *September*; and no licence shall intitle any person to keep an alehouse in any other place than in which it was kept by virtue of such licence.

Last proviso
of the stat.

2 G. 2. re-
pealed by stat.
26 G. 2.

No licence shall be granted to a common inn or alehouse to retail any brandy or strong waters, but at a general meeting of the justices acting in the division where such persons dwell, to be holden on the first of *September* yearly, or within twenty days after, or at any other general meeting of the said justices, which said last proviso is by 26 *Geo. 2.* repealed, and that from henceforth no licence for the purposes aforesaid shall be granted but on the first day of *September* yearly, or within twenty days after, and that such licence shall be made for one year only, to commence on the 29th day of the said *September*, and that the day and place for granting such licences shall be appointed by two justices acting for the division, by warrant under their hands and seals, at least ten days before such meeting, directed to the high constable of such division, to give notice to the several inn-keepers, &c. And all licences hereafter granted at any other time or place to be void.

Clerks of the peace to register and deliver copies of the recognizances to the justices at their general meeting in *September* yearly: for every recognizance there shall be paid to the clerks of the justices for the clerks of the peace, the sum of 1 s. and no more, which shall be paid to the clerks of the justices over and above the fees payable to the said justices clerks, to be paid by the persons licensed.

Recovery of forfeitures for granting of licences without taking recognizances, shall be by action of debt, bill, plaint or information.

mation. Where a justice of the peace shall adjudge the recognizance to be forfeited, or the condition thereof broken, he is to summon the party to the quarter-sessions, to answer the complaint, and may bind the person who shall make such complaint in a recognizance to appear at such quarter-sessions, and give evidence against such person, and the justices shall have power by a jury to inquire of the misdemeanour; and if such jury shall find the person so complained of guilty of the breach of such recognizance, the recognizance is to be estreated into the exchequer, shall from after be disabled from selling beer and ale for the space of three years.

Justices may, at the request of the prosecutor or party complained of, adjourn the trial to the next sessions.

Where a justice shall suspect that any victualler or retailer, &c. sells ale, &c. without licence, he may summon him, and the officer who surveys him, and examine such officer upon oath touching his survey and charge.

That if any person shall make information before a justice, that he has reasonable cause to suspect any person sells beer, ale, &c. without licence, such justice is to summon the party and evidence; and if such person summoned not appearing, or refusing to give evidence, forfeits 10*l.* to be levied by distress and sale, deducting the charges, to be paid to the overseers of the poor of the parish where such person lives, for the use of the poor.

Persons disabled by conviction to sell ale, &c. disabled also to sell spirituous liquors, &c.

Alehouses.

That every person so convicted of selling ale, &c. without licence from two justices of the peace, shall forfeit for the first offence 40 s. the second 4 l. and the third 6 l. to be levied by distress and sale; one moiety to the informer, and the other to the poor of the parish; and for want of distress, to be committed to the common gaol, or other prison or house of correction, without bail, for one month; second offence two months; for the third, until he shall be discharged by order of sessions.

Convictions to be certified to the next quarter-sessions, and to be filed there, to be certified in the following manner:

Middlesex, *A.* *B.* is convicted on his or her
to wit, *A.* own confession (or on the oath
of) of having sold ale, beer or
other liquors in the parish of in
this county, on the day of
without being licensed thereto according to
law (or after being disabled to sell, as the case
may be). Given under my hand and seal this
day of

And there shall be added, that the same is the first, second or third conviction.

That such offender shall not be punished again for the same offence by any former act.

Rights of the two Universities to grant licences reserved.

That nothing herein to extend to alter the times of granting licences for keeping of inns, &c. in cities or corporate towns.

Apprentices.

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That any person deemed a competent witness, though an inhabitant, or liable to the payment of rates, upon any information or complaint for any offence against this statute of 26 Geo. 2.

See more of **Inns and Alehouses** hereafter.

Appeals. See **Settlements.**

Apprentices.

JUSTICES of the peace to reconcile differences between masters and apprentices, and discharge the latter, the fault being in the master, or otherwise to commit the apprentice; and none which have not served seven years in any art or mystery, to set up any trade, on pain of 40 s. for every month. 5 Eliz. c. 4.

Justices of the peace to reconcile differences between masters and apprentices.

Overseers of the poor, with the assent of two justices, to place forth poor children apprentices, viz. a man child till he is twenty-four, and a woman child till twenty-one years of age or marriage. Stat. 23 Eliz. c. 2.

There are divers offences in servants and apprentices, and labourers, and some in masters, punishable by the law of the 5th of Eliz. But in regard the law is doubtful in the sense of it, in relation to the matters abovementioned, therefore it seems to speak that they are only punishable at the sessions of the peace, and that in all differences be-

tween masters and servants it is thought advisable for the justice to warn the parties to be before him, and endeavour to reconcile the matters between them.

Persons refusing to accept poor apprentices, forfeit 10 *l.* *Stat. 8 & 9 W. 3. c. 30.*

Two justices of the peace, mayors, &c. and churchwardens, &c. with their consent, to put out poor boys above ten years of age apprentice to the sea service, and apprentices may be turned over to the sea service. *Stat. 2 Ann. c. 6.*

The act of 9 *Ann. c. 21.* requires 6 *d.* in the pound for every pound under 50 *l.* given with apprentices, and 12 *d.* in the pound for all sums given exceeding it, as a duty to the crown; monies given with poor apprentices excepted. The statute mentions money paid or agreed to be paid for five years in the putting out any clerk apprentice, &c.

The duty on apprentices indentures, how to be paid.

The duty on apprentices indentures to be paid by masters in a month in the weekly bills of mortality, and in any other part of *England* within two months after executed, &c. and if the full sum agreed be not inserted in the indentures, or the duties not paid, indentures shall be void, and apprentices not capable of following trades; and indentures are to bear date the day when executed, on pain of forfeiting double the sum given with the apprentice; made perpetual by 9 *Ann. c. 21.*

There have been several acts to discharge persons from penalties, and make indentures good in law, on payment of the duty omitted to be paid in a further time limited, &c. and

and almost annually there passes an act for giving further time for payment of these duties. 10 & 11 Ann. G. 1. & 2. 20 G. 2. c. 45.

Masters not paying the duty in time shall forfeit double the duty, besides all other penalties. 20 G. 2. c. 45.

If a master who has neglected to pay the duty, shall pay double the duty within two years after the end of the apprenticeship, and before any suit commenced, the apprenticeship shall be valid, and the party acquitted of the penalties. *Ibid.*

If a master who ought to pay the double duties, shall not pay the same within three months after request in writing by the apprentice, and the apprentice shall, within two years after the expiration of the apprenticeship pay the same; he may demand and recover the money paid with him as apprentice to his master, together with costs.

Persons who have omitted to pay the duties for the indentures or contracts of clerks and apprentices, and to have the indentures stamped within the times limited by law, or have omitted to insert therein, in words at length, the full sum received or contracted for, it is enacted, that upon the payment of the duties on or before the first of August 1754, the same shall be deemed good in law, and may be given in evidence at any court; and such clerks, apprentices or servants may exercise their respective trades and employments, and they are discharged from all penalties incurred by the said omissions.

Apprentices.

Persons who through mistake or some unavoidable accident have omitted to cause affidavits to be filed in the proper offices of the execution of contracts of clerks to attorneys and solicitors within the times limited by law, it is enacted, that if such affidavits shall be made and filed on or before the first day of *Michaelmas* term next, in such Manner as directed by the 22 & 24 G. 2. the same shall be deemed good in law, and the persons who made such omissions are discharged from all penalties and disabilities mentioned in the said act of 22 G. 2. Stat. 27 G. 2. continued to the first of *August* 1755.

Apprentice under age to serve out his time, how understood.

If one is bound an apprentice, though under age, yet he is compellable to serve his time out as if he were of age; but this is to be understood by the stat. 5 *Eliz.* apprentices by compulsion. *Dalt.* 126.

A poor person bound apprentice, no justice's hand to it, no settlement.

A poor person is bound apprentice voluntarily to a person, no justice's hand being put to the indenture, the sessions held it no settlement for want of it. The stat. 5 *Eliz.* extends only to a poor child put out in a compulsory way; but here it is by consent, and so the statute does not extend to it.

An indenture not indented gains no settlement. *The king against The inhabitants of Mellingham, Trin.* 5 & 6 G. 2. B. R.

Indenture not stamped gains no settlement. 4 G. 2. B. R. *The parish of Cuerdon and Laland.*

Hired servants only are within the statute of 5 *Eliz.* to have testimonials.

An indictment will lie against a master for refusing to provide for a poor apprentice. See *Cumberbatch* 405. B. R.

Apprentice must be above seven years of age and under fifteen; for if above they cannot be compelled to serve, according to the stat. 5 *Eliz.*

Above the age of ten years any person may be bound by his own agreement by indenture, and if above twelve he may be compelled by a justice of the peace. See more hereafter.

If children shall refuse to go to be apprentices, when ordered, the justices may send them to the house of correction till they shall consent to be bound. *Dalt.* 85, 95.

So may parents of the children be indicted, if they (not being able to bring them up honestly) refuse to part with them, or if they shall intice their children away after they are bound. *Dalt.* 78, 79.

These apprentices must be bound by indenture; the indenture to be made between the churchwardens and overseers of the poor and the apprentice, of the one part, and the party that takes the apprentice, of the other part: and it may be said to be with the consent of the justices indorsed on the backside.

The form of such indenture followeth:

THIS indenture, made the first day of *June* in the twenty-seventh year of the reign of our sovereign Lord *George* the Second, by the grace of God of *Great Britain, France and Ireland*, king, defender of the faith,

Apprentices.

faith, &c. *anno Domini* 1754, witnesseth, that *A. B.* and *C. D.* churchwardens of the parish of, &c. in the county of *M.* and *E. F.* and *G. H.* overseers of the poor of the same parish, *L. M.* a poor child of the same parish, (or son of, &c. who is unable to bring up and maintain him) of the one part, and *J. K.* of, &c. taylor, of the other part, witnesseth, that the said churchwardens and overseers, by the assent of, &c. two of his majesty's justices of the peace for the said county, according to the direction of the statute made in the forty-third year of the reign of Queen *Elizabeth* for the relief of the poor, hath put out and bound the said *L. M.* apprentice to the said *J. K.* till the said *L. M.* shall come to the age of twenty-four years; during all which time the said apprentice his said master well and faithfully shall serve, his secrets keep, his lawful commands every where willingly do; he shall do no hurt or damage to his said master, nor consent to its being done by others, but shall forthwith give notice thereof; he shall not waste the goods of his said master, nor lend them to any person without his consent; he shall not frequent taverns nor alehouses during the said term, (except it be in his master's business) and he shall not play at cards, dice or other unlawful games; he shall not, either by day or night, absent himself from his said master's service, but in all things as a good and faithful servant shall demean himself towards his said master and all his. And the said *J. K.* his said apprentice shall, during the said term, educate

educate and bring up, or cause to be educated and brought up, in his said trade of a taylor in the best manner he can, and find and allow unto him during the said term sufficient, wholesome and competent meat, drink, lodging, washing, apparel and all other things necessary and fit for such an apprentice. In witness whereof the said parties to these presents have to the same interchangeably set their hands and seals the day and year first above written.

The consent of the justices indorsed on the back.

WE whose names are hereunder subscribed, justices of the peace for the said country, do hereby declare our consent to the putting forth *L. M.* apprentice to the said *J. K.* according to the intent and meaning of the within written indenture.

R. C.

J. H.

The application to the sessions for discharge of an apprentice must be by petition, whereon the sessions appoint a day for both parties to attend the court.

The warrant to discharge an apprentice must be made by the justices where the master dwells, and the sessions are not to proceed to such discharge, till it be known whether one justice cannot reconcile them.

Justices

Apprentices.

Justices of the peace may discharge an apprentice, and order restitution of money given with him. *Salk.* 67, 490. *Hawksworth's Case*, 2 *Car.* 2.

See **Settlements.**

Discharge of an apprentice.

Quorum repealed.

Middlesex, } **WE** whose names and seals
to wit, } are hereunto set, four of
his majesty's justices of the peace for the said
county (*quorum unus*) having heard and examined the matters in difference between *R. N.* an apprentice, and *R. B.* of *S.* in the said county, weaver, his master; and it appearing to us, that the said *R. B.* hath not allowed his said apprentice sufficient meat, &c. and hath several times beaten him very immoderately, without any just cause: We do therefore, for the causes aforesaid, discharge the said *R. N.* from his apprenticeship; and we do hereby, under our respective hands and seals, pronounce and declare, that the said *R. N.* is discharged from being any longer an apprentice to his said master. Witness our hands and seals.

This discharge must be inrolled by the clerk of the peace or town clerk, which shall be good against the master, his executors, &c. 5 *Eliz.* c. 4.

This is to be done at the quarter-sessions, if one justice cannot reconcile them.

If a master should put his apprentice into apparel, it is a gift in law, and he cannot after take it away, though he should part with his apprentice. *Dalt.* 153.

An order to discharge an apprentice may be originally made at sessions; though *1 Mod.* 287 says, the sessions have nothing to do concerning an apprentice, before it comes before a private justice.

Assault and battery.

IF a person be assaulted and beaten, and hath no witnesses to prove the fact, the party, instead of his action for the battery, may bring an information in the crown office, or an indictment, against the aggressor, and there he shall be fined, *Terms de ley*, or he may indict him at the sessions of the peace.

It is held, that the least touching of another person in anger is a battery, which may be committed either by pushing, jolting or fillipping upon the nose, &c. and spitting in a man's face is a battery, if not done by accident. *Dalton.*

The laying hands gently on one is not a battery to found an action; the law will not presume any damage in such case; and the defendant may justify *molliter manus imposuit*, &c. But there is no such plea to an indictment, for the plea there must be guilty or not guilty. See **Indictment.**

The

Assault and battery.

The action of assault and battery is an action that lies for a trespass against a man's person, where any injury is done to another in a violent manner, and such offence is also indictable; though it is usual not to prosecute an indictment, but to bring this action only for damages. *Terms de ley.*

Where there are several defendants to any action of assault, &c. and one or more acquitted, the person so acquitted shall recover cost of suit, unless the judge certify there was a reasonable cause for making them defendants. *Stat. 8 & 9 W. 3. c. 11.*

Where a special justification is to an action of assault and false imprisonment, the cause of commitment must be set forth in the plea. *3 Mod. 160.*

Where the defence consists in matter of law, the defendant may plead specially, but when it is fact he may plead the general issue. *3 Mod. 166.*

Bastards.

Bastards.

IT is said, that two justices cannot order the reputed father of a bastard child to give security for performance of their order, before he hath made default in obeying it; and an order made without complaint of the parish officers, is not good. Justices cannot order the father of a bastard to give security, till disobeying it.

The putative father may appeal from the order at the next sessions, if he hath good cause; and if upon the appeal the sessions do affirm or quash such order; and if in case the two justices cannot agree in making their order, it may be referred to the sessions. If the reputed father brings an appeal against the order, he must enter into a recognizance for his appearance at sessions; not giving security to the parish, and refusing to enter into such recognizance, two justices making the order, may commit him. *Stat. 18 Eliz.*

If justices of the peace in their sessions revoke an order of two justices for keeping a bastard child, and no father can be found, they are liable to keep the child themselves. *Vent. 59.*

If a child dies after the order is made, and before the next sessions, and no security is given to perform the order, yet when the party appears at sessions, the justices may order him to pay the charges, upon proof of serving the order.

And if no order be made in six weeks after the delivery of the bastard, the man shall be discharged. *Stat. 6 G. 2.*

Two

Two justices may inflict corporal punishment upon the reputed father of a bastard child, not being able to discharge the parish, by whipping. *Stat. 18 Eliz. c. 3.*

But if a woman will discharge the parish, she cannot be punished by the stat. 18 *Eliz.* yet she may be punished by whipping.

If any person conspire to charge another with a bastard child, an indictment will lie, for a man is thereby disgraced. *1 Vent. 305. 1 Sid. 68.*

By the stat. 14 *Car. 2.* that though the churchwardens and overseers of the poor of the parish where a bastard child is born, may seize so much of the goods, and receive so much of the rents of the lands of the reputed father and mother, as shall be ordered by two justices; yet they cannot sell the goods by virtue of the order of the two justices; the sessions must make an order for that purpose.

But such justices as made such order have no vote at sessions, for they cannot be indifferent persons where the legality of their own act is questioned. If the justices proceed on the 18 *Eliz. c. 3.* the sessions have no power to commit, but ought to proceed on the recognizance. *The queen against Weston, 2 Ld. Raym.*

The two first and next justices of the peace have no power to commit any one for not performing their order, but they are to bind over to appear at the next sessions, and may commit for want of sureties. *2 Bulstr. 341. Hammond's Case.*

The

The recognizance taken ought to be in the disjunctive, *viz.* to perform the order, or to appear at the next quarter-sessions, and to abide the order there. 2 *Bulstr.* 341, 342.

Rules concerning bastards, and their settlements.

1. They must be made by two justices, (*quorum unus*) and such justices must reside nearest to the parish church of the parish to be relieved. Rules concerning bastards, and their settlements.

2. That it be made at a private meeting, and not at the sessions.

3. That it should be expressed to be made concerning a bastard likely to be chargeable to the parish, or that it is so to the parish, for the putative father is to provide for it so long as it shall be chargeable to the parish.

4. The place of birth must be set forth to prove the justices jurisdiction.

5. It must appear to be born in the parish to which relief is ordered.

6. It must be made for relief of the parish by a weekly maintenance. *Style* 154, 368. *1 Vent.* 37.

If the party charged with being the father comply with the order made by two justices, and put in security to indemnify the parish, and after the child become chargeable to the parish, the justices of the peace may not intermeddle, and the parish have no remedy, but to sue the sureties on their bond. 2 *Saund. Rep.* 80.

D

Note;

Note; By the 18th of *Eliz. c. 3.* an order for security could not be made until after contempt in point of payment. *The queen against Chaffey, 2 Ld. Raym. 858.*

But now by the stat. 6 G. 2. c. 31. it is otherwise, that when an order is confirmed in *B. R.* an attachment lies for non-performance of it; and therefore the court of king's bench will not take security of the party for performance of it. *Ibid.*

It is not requisite in an order of bastardy, when such order is made by two justices, to say, that the defendant was summoned, or had notice, or was heard; otherwise had it been originally made at sessions. An order for paying so much weekly to a parish towards keeping of a bastard child was quashed, because it did not appear by the order that the child was born in that parish to which the money was to be paid. *Style 368.*

An order made without the complaint of the parish officers is not good; but it was otherwise in *B. R.* by Lord *Hardwick* Ch. J. and the court, *Hil. 9 G. 2. The king against Jenkins.*

Where the quarter-sessions first make an order in bastardy, and afterwards the two justices make another order for the bastard, it is a nullity. If the two justices make not a provision for the bastard, the sessions must settle it as the two justices ought to have done it. *Jones 330.*

The parish where a bastard is born, whose father cannot be found, must maintain it. A poor infant is to be maintained by the parish where born, unless they can find that it has another

another settlement. *The hamlet of Spitalfields against The parish of St. Andrew Holborn,* 1 *Ld. Raym.* 567.

The bare conspiring to charge one with keeping of a bastard child, though the woman be not with child, nor there is no child really, but only a contrivance to defame the person, and cheat him of his money, is a crime of a very heinous nature, and indictable. 1 *Vent.* 304. *The king against Armstrong.* 1 *Lev.* 62.

A bastard child is generally to be settled where it is born; but if it be born in a parish to which the mother is removed by an order, that is illegal, it will gain no settlement. *Salk.* 121.

A motion was made to quash an order of two justices to remove a woman and her bastard child from *A.* to *B.* when it appeared by the order, that the bastard was born at *C.* By *Holt*, The bastard must be kept where born. A single woman was removed from *D.* to *S.* by two justices, thence by two justices to *B.* she voluntarily returned to *D.* and there bore a bastard child. If any fraud appear in conveying a woman to bear a child, it may be sent back with its mother to her last settlement. *Comberbatch* 285.

An appeal to an order of bastardy, when to be brought. See **Appeals.**

Orders of bastardy cannot be quashed, except the reputed father be present in court. 2 *Salk.* 475.

An order of two justices was made, that the defendant should pay a certain sum of money weekly till the bastard should attain

the age of fourteen years : it was held by the court that the order was naught, because the justices have no power but to save and indemnify the parish, and that is as long as it may be chargeable to the parish. *Salk.* 121. *B. R.*

Justices in corporations, &c. are to put the acts in execution relating to bastards, as justices in counties, &c.

A woman was committed to the house of correction for life, for wrongfully charging a man with a bastard child. *Pasch.* 13 *Car.* 1.

But the usual punishment for these offenders is pillory, whipping, &c. 1 *Vent.* 305.

Two next justices (*quorum unus*) but this *quorum unus* may be omitted by the stat. 27 *G. 2.* to take order for punishing the mother and father of bastards, and for relief of the parish by a weekly payment; the father and mother not obeying the order, to be imprisoned without bail. But a bastard of a person able to keep it is not within this statute. 18 *Eliz.* c. 13.

Justices of the peace may send to the house of correction for one year lewd women having bastards that may be chargeable to the parish. *Stat.* 7 *Jac.* 1. c. 4.

It is murder in a woman to conceal the death of her bastard. *Stat.* 21 *Jac.* 1. c. 7.

*The examination and confession of one with
child.*

Middlesex, } THE examination and volun-
to wit, } tary confession of *E. W.* sin-
gle woman, taken before me, one of his ma-
jesty's justices of the peace for the said county,
on the sixth day of *October* 1751, on her Oath
faith as follows :

That on or about the day of *July* last
past *R. G.* of the parish of *L.* in the said
county, taylor, had carnal knowledge of her
body in and several other times
since, whereby he did beget her with child
or children, wherewith she is now pregnant.
And she further faith on her oath, that no
other man but the said *R. G.* is the father of
the said child or children wherewith she is
now pregnant, when born.

Sworn the day and
year abovesaid,
before me

E. W.

This may be done by one justice on the
oath of the woman ; but after she is delivered
she must be again examined by two justices,
whereof one must be of the *quorum* ; and this Quorum re-]
must be done before the justice can send his pealed.
warrant to apprehend the reputed father.

The examination after the birth of a bastard child.

Quorum repealed.

Middlesex, } THE examination of S. S. of,
to wit, } &c. taken before us, R. C.
and J. F. two of his majesty's justices of the
peace for the county (whereof J. F. is of the
quorum) the 10th day of September 1751,
who upon her oath saith,

The female or male bastard child of which
she was delivered the second day of August
last about three o'clock in the afternoon, in
the parish of K. was begotten by R. G. late
of N. in this examinant's house (she keeping
a victualling-house) and there became ac-
quainted with her, and had the carnal know-
ledge of her body. And this examinant fur-
ther saith, that he the said R. G. and no other
person whatsoever, is the only true and law-
ful father of her said child, of which she was
delivered as aforesaid.

Sworn the day and
year abovesaid,
before us

S. S.

J. H.

R. C.

Then the two justices, by the 18 Eliz.
must make an order both for providing for
the child and discharge of the parish, but
not to proceed to do it, till they have con-
vened the putative father before them; espe-
cially now that daily experience shews that
many

many people are wrongfully accused; and this must be done by warrant. See *Justice's Order, postea*.

Neither can the justices make an order on the woman's complaint only.

By the 18 *Eliz.* it appears that no power is given, but only over the bastards of people unable to maintain them, and for the sake of indemnifying the parish; *and the very words of the order*, That the child is likely to become chargeable to the parish, *sufficiently shew that they have no jurisdiction.* Cro. Car.

437.

When the woman voluntarily appears before the justice before the birth of the bastard child, after the examination taken, then the justice may send his warrant for the reputed father. See 6 G. 2. 31.

When the person appeareth before the justice, then he must enter into a recognizance with sureties for his appearance at the next sessions, and so may be continued till the child is born; then, after examination by two justices, the reputed father and mother by their warrant must be brought before them.

But if the woman dies, or is married, or miscarries before delivered, then the complaint is discharged.

The justices may order a sum in gross, because it might be to reimburse the parish the extraordinary charge of the parish before the order for weekly payment was made. 2 Sid. 326. Salk. 124.

Bastards.

*Bond to indemnify the parish concerning a
bastard child.*

K NOW all men by these presents, that we, *J. T.* of the parish of *St. Andrew, Holborn*, in the city of *London*, cordwainer, and *W. E.* of the same parish, cordwainer, are held, and firmly bound unto *W. B.* and *T. T.* churchwardens of the parish church of *St. M.* in the county of *Middlesex*, and *R. W.* and *T. D.* overseers of the poor of the said parish, in forty pounds of good and lawful money of *Great Britain*, to be paid to them, churchwardens and overseers of the poor, or either of them, or their certain attorney, successors or their assigns, to which payment well and sufficiently to be made, we bind ourselves, and every of us by himself, for the whole and in the whole, our heirs, executors and administrators, and every of them, firmly by these presents. Signed with our seals, dated the 14th day of *January* in the 25th year of the reign of our sovereign Lord *George* the second, king of *Great Britain, France* and *Ireland*, defender of the faith, &c. and in the year of our Lord God 1752.

The condition of this obligation is such, that whereas *A. M.* of the parish of *St. Mary, Islington*, in the county of *Middlesex*, single woman, was lately gotten with child or children, being then and still unmarried; of which child or children the above bounden

J. T.

J. T. is adjudged to be the father: if therefore the said *J. T.* and *W. E.* or either of them, their or any of their heirs, executors, administrators or assigns, do from time to time, and at all times hereafter, clearly and fully acquit, discharge and save harmless, as well the above named *W. B. T. T. R. W.* and *J. D.* churchwardens and overseers of the poor of the parish of *St. Mary, Islington*, aforesaid, and their successors for the time being, as also all other the inhabitants and parishioners of the said parish, which now or hereafter shall be (for the time being) and every of them, of and from all and all manner of costs, charges, trouble and incumbrances whatsoever, for or by reason of the birth, education, maintenance, nourishing and bringing up of the said child, and of and from all actions, suits, charges, troubles and demands whatsoever, touching or concerning the same; that then this obligation to be void and of no effect, or else to remain in full force.

Signed, sealed and
delivered in the
presence of, &c.

An order for the reputed father of a bastard child to discharge the parish.

Middlesex, } **W**HEREAS due proof hath
to wit, } been made before us, *R. C.*
and *J. H.* two of his majesty's justices of the
peace for the said county (whereof one is of
the

No need in
the order to
say that the
defendant was
summoned,
had notice, or
was heard.

the *quorum*) inhabiting in or near the parish of *St. Mary, Islington*, upon the oath of *L. H.* single woman, the mother of a male bastard child born the 15th day of *February* last past in the said parish of *St. Mary, Islington*, that one *J. L.* of the said parish, did beget, on the body of the said *L. H.* the said male bastard child, which said child is now become chargeable to the said parish of *St. Mary, Islington* (of which the churchwardens and overseers of the poor have complained): first, we the said justices, upon examination of the said *L. H.* the mother, upon oath, touching the father of the said male bastard child, and the cause and circumstances thereof, do adjudge and declare the said *J. L.* to be the reputed father of the said male bastard child born of the body of the said *L. H.* in the said parish of *St. Mary, Islington*; and thereupon we do order, as well for the relief and to save harmless and keep indemnified the said parish of *St. Mary, Islington*, as for the maintaining and keeping the said male bastard child, that the said *J. L.* do forthwith, upon sight of this order (a true copy thereof being first delivered unto him) pay or cause to be paid unto the churchwardens or overseers of the poor for the time being of the said parish of *St. Mary, Islington*, or some or one of them, the sum of 40 s. for and towards the month's lying-in and laying of the said *L. H.* of the said male bastard child: and the said *J. L.* shall likewise pay or cause to be paid weekly, and every week, to the said churchwardens or overseers of the poor, or to some or one of them, the sum

sum of 2s. (*as the case shall be*) of lawful money of *Great Britain*, for and towards the relief and maintenance of the said male bastard child, for so long time as the said child shall be chargeable to the said parish of *St. Mary, Islington*. And lastly, we do order, that the said *J. L.* shall forthwith give security to the churchwardens and overseers of the poor for the time being of the said parish of *St. Mary, Islington*, for the true performance of this our order, otherwise to find sufficient sureties for his personal appearance at the next general sessions of the peace to be holden for the said county, there to abide such further order, as the justices then and there present shall think fit to make in that behalf; and if no such order shall be there made, then to abide the present order. Given under our hands and seals this 7th day of *March* in the year of our Lord 1752.

The parish where a bastard is born, where the father cannot be found, must maintain it. *Shaw's Parish Law* 174.

Bawdry

IS an offence at common law, and anciently punishable in the leet and toun by fine and imprisonment. 3 *Inst.* 1 *Hawk.* c. 74. §. 1.

A constable upon an information that a man and a woman being in adultery or fornication

Bawdry, how to be understood.

nication together (or that a man and a woman of evil report are gone to a suspected house together in the night) the officer may take company with him, and if he find them so, he may carry them before a justice of the peace to find sureties for the good behaviour.

Dalt. 214.

If a man be indicted for frequenting a bawdy-house, it must appear that he did know it to be such a house; and it must be expressly alledged in the indictment, that it is a bawdy-house, and not that it is suspected only to be such. *Poph.* 208.

A feme covert that is a lodger, that keeps ill women in her chamber, may be indicted. *1 Hawk. P. C.* 196.

The keeping a bawdy-house is a common nuisance, and the indictment for keeping is a charge against them for this nuisance; and the wife may have a share in the management or government of a disorderly house, as well as the husband. *Salk.* 384.

An indictment was against the defendant, for that she was a common bawd; upon not guilty pleaded the defendant was convicted, but it was reversed upon a writ of error; for though an indictment will lie for keeping a bawdy-house, it will not lie for being a common bawd, nor for solicitation of chastity. *2 Salk.* 382.

A lodger who keeps a single room for the use of bawdry, is indictable for keeping a bawdy-house. *Ibid.*

An indictment against baron and feme for keeping a common bawdy-house; upon motion to quash it the objection was, that the
keeping

keeping of the house could not be the keeping of the wife, any more than it is the keeping of a servant; but the court answered and resolved, that the feme may be guilty and commit a crime with her baron, and that the crime is joint and several: baron and feme may commit a trespass, murder, treason, &c.

See **Chefts and Robberies.**

Bakers and bread.

THE lord mayor of *London*, mayors, &c. of any city, &c. or two justices, where there shall be no such magistrates, shall set the assize and weight of bread: every baker to set a mark on his bread: bread wanting in weight or goodness to be distributed to the poor. *Stat. 8 Ann. c. 18.*

The forfeiture of 5*s.* per ounce for every ounce wanting weight, and 2*s.* 6*d.* for less than an ounce, on complaint to a justice of the peace within twenty-four hours after baked, or exposed to sale within the bills of mortality, and within three days in other places. 1 G. 2. 12 G. 2. c. 13.

Where there are no mayor or chief magistrate, two justices shall from time to time set the assize and weight of bread, having regard to the price of the grain, and making reasonable allowance to the bakers; as for example, if the price of wheat is 5*s.* a bushel, the magistrate

gistrate allows 1s. 6d. to the baker for baking. See the stat. 8 *Ann. c. 18.*

The assize of bread for the city of *London* and bills of mortality (except *Westminster*, *Southwark*, and the bills of mortality in *Surrey*) to be set by the lord mayor and court of aldermen.

It has been a doubt, whether the penalties above can be levied, or the bread be forfeited, if there be no previous assize set, because it is hard to determine whether bread be under weight, or exceeds in price, when no price is fixed, and when the value of the corn or labour is not ascertained.

Beggars.

Law against begging in the streets.

IT is observable, that by the statute of 12 *Ann. c. 23.* which obliges constables to remove beggars, and for a second offence to whip them, was, as it has been taken notice of, to be very severe; and with how very little effect; which proceeds from one great mistake which seemed to run through all our laws on that subject, *viz.* the punishing real objects of charity as criminals, instead of providing hospitals for those who really are not able to work, and workhouses, or at least work for all those who are really able. That act being now repealed, and some alterations introduced

introduced as to the treatment of beggars, both in apprehending and disposing of them afterwards. See *Ungarants*.

The statutes concerning houses of correction are 39 *Eliz. i. c. 4.* 7 *Jas. i. c. 4.* and 17 *G. 2. c. 5.*

Good behaviour.

SURETIES of the peace is an acknowledgment of a bond to our sovereign lord the king, taken by a competent judge of record for the keeping of the peace; that of the good behaviour is for the keeping of the good behaviour, and hath affinity with the former: when the peace is granted upon request there must precede an oath of the party desiring it, that he standeth in fear of his life, or some bodily hurt, and that he desireth it not of malice, but of very fear, which may arise from his threatening to do it, and without this oath it is not to be granted.

What is a breach of the peace or good behaviour, and cause of forfeiture of the recognizance? To do any such thing as before, for which the sureties of the peace or good behaviour may be granted; as maliciously to threaten, to kill, beat or imprison another; especially the party at whose suit it is granted, is a cause of the breach of the peace and forfeiture of the recognizance. *Pulton De pace*, and *Lambert* 114. 33 *H. 6. 12 Ed. 4. 35.*

If a man swear, or do any thing after he is bound to the good behaviour, &c. for swearing is a breach of the peace; and also to challenge to fight, or threaten to beat or wound, or any such like thing, which tends immediately to the breach of the peace, is a cause of the forfeiture of a recognizance; but scandalous words, especially if they be not actionable, as to say, thou art a liar, drunkard, knave, &c.

Surety of the good behaviour may be granted at the suit of divers persons of credit, to provide for the safety of many; but surety of the peace is usually granted at the suit of one, to preserve the peace chiefly towards one; and that surety of good behaviour is grantable in several cases where surety of the peace is not. *Dalt.* 72.

The surety of the peace against a nobleman is to be had by *supplicavit*. *Ibid.* 68.

To call a mayor fool in the execution of his office is a breach of the good behaviour; and so it is to threaten witnesses. *Latch* 5. *Cro. Eliz.* 78.

The recognizance must be certified the next sessions, or the justice forfeits 10*l.* and if the party doth not appear, the recognizance itself, with the cause of forfeiture, must be certified into the exchequer, that process may be awarded against the offender. *Dalt.* 190.

All process of the peace or good behaviour out of chancery or king's bench are void, unless granted in open court upon a declaration in writing on oath; and if the
causes

Breaking of banks.

49

causes alledged in such writing prove untrue, the judges shall award costs to the party aggrieved. *Stat. 21 Jac. I. c. 8.*

See **Recognizances** and **Supplicavit.**

Breaking of banks.

IF any person shall unlawfully cut off, draw up, or remove and carry away any piles, &c. used for the securing any marsh or seawall or banks, on complaint or information thereof made upon oath to any justice residing near the place, such justice shall summon the party complained of, or shall issue his warrant to apprehend and bring such person before him; and upon his appearance or neglect to appear, he shall proceed to examine the fact, and upon due proof thereof made, either by confession, or oath of one witness, shall convict the offender, who shall thereupon forfeit 20*l.* half to the informer, and half to the overseers for the use of the poor, to be levied by distress and sale, and for want of distress to be committed to the house of correction to hard labour for six months.

E

Buggery

Buggery and sodomy.

SODOMY and buggery is the carnal knowledge of the body of a man or beast, against the order of nature, and it may be committed by man with man, which is the common crime, or by man with a woman, or a man or woman with a beast. 3 *Inst.* 58.

It is felony both in the agent, and patient consenting, unless the person on whom committed be within the age of discretion, and then it is felony in the agent only; and he that doth the act is not only a principal, but those that are present aiding and abetting are principals. 12 *Rep.* 36. *Hale's P. C.* 177.

Some kind of penetration and emission must be proved, but any of the least degree is sufficient.

In the 12th of king G. 1. a great number of these wretches were convicted, and three of them put to death.

By the statute buggery is made felony without benefit of clergy, and justices of the peace have power to hear and determine the offence. *Stat.* 25 *H.* 8. c. 6.

Burglary. See **Felony.**

Butchers.

Butchers.

BUTCHERS selling swine's flesh mangled, or dead of the murrain, to stand in the pillory.

The mayor, &c. of *London* may redress defaults of butchers, &c. as they do such as sell ale and beer. *Stat. 31 Ed. 3. c. 10.*

Butchers conspiring to sell their meat at a certain price, to forfeit 10 *l.* for the first offence, for the second offence 20 *l.* and 40 *l.* for the third, or stand in the pillory. 2 & 3 *Ed. 6. c. 15.*

No butcher shall kill any beast within a walled town, except *Carlisle* and *Berwick*, upon pain of 1 *s.* an ox, every cow and other beast 8 *d.* to the king, and half to him that will sue for the same. 4 *H. 7.*

If any butcher shall kill or sell any victuals on the Lord's day, shall forfeit 6 *s.* 8 *d.* one third to the informer, and two thirds to the poor, on conviction before any one justice on his own view, or confession, or oath of two witnesses, to be levied by the constable or churchwardens. 3 *C. 1.*

No butcher to buy cattle to sell again, on pain of forfeiture. 1 & 2 *Ed. 6. c. 19.*

Nor to use the trade of a tanner under the penalty of 6 *s.* 8 *d.* a day. *Stat. 1 Jac. 1.*

The *stat. 13 Car. 2.* inflicts a forfeiture of double the value on butchers selling cattle, &c. alive.

Burning, &c.

Butchers selling cattle in *London*, or within ten miles, fat cattle or sheep alive or dead, to forfeit the value.

The act of the 5th of *Anne* not to extend to the selling of calves, lambs or sheep dead from one butcher to another. *Stat. 7 Ann. c. 6.*

Burning.

WHO shall wilfully and maliciously burn, or cause to be burned, or aid, procure or consent to the burning any dwelling-house, or any part thereof, or any barn then having corn or grain in the same, shall not have his clergy.

If any persons shall in the night-time maliciously, unlawfully and willingly burn, or cause to be burned or destroyed, any ricks or stacks of corn, hay or grain, barns, or other houses or buildings, or kilns, he shall be guilty of felony. *Stat. 43 Eliz. c. 13.*

See the *Black Act*.

Barratry, What.

A Common barrator is a common maintainer of suits or quarrels, or in the country, as first, in disturbance of the peace; secondly,

secondly, in taking and keeping of possession with force or deceit; thirdly, by false calumniation and sowing of quarrels; but to indict him of it, it ought not to be, that he hath done so twice or thrice, but that he is a common doer of them. 8 Rep. fo. 36. ad

Bail or Bailment. See Recognizances.

Cattle.

THE importation of cattle from *Ireland* declared a common nuisance. Stat. 18 C. 2.

And if any shall be imported, any person may seize and keep them forty-eight hours; and if in that time it can be made appear to a justice, on the oath of two witnesses, that they were not imported from *Ireland*, or any other place beyond the seas, then they shall be delivered on warrant of such justice; but in default of such proof and warrant, then to be forfeited. 18 C. 2. c. 2.

The seizer of such cattle, after conviction, shall cause them to be killed, the hides and tallow he shall have himself, the rest shall go to the poor, to be distributed by the churchwardens and overseers of the poor. 32 C. 2.

Cattle Distempered.

The seizure, churchwardens, &c. neglecting their duty herein, shall forfeit 40s. for every one cattle, and 20s. for a sheep and swine; half to the poor, and the other half to the informer, by warrant of one justice, to be levied by distress, for want of distress to be committed for three months. 32 C. 2.

Ships bringing the same shall be forfeited, and any person may seize and sell them, half for the poor, and half for himself. 20 C. 2.

c. 7.

The preamble to the stat. 28 G. 2. sets forth, that the contagious distemper amongst the horned cattle still continues; it is therefore enacted, that the statute of the 19th of G. 2. which enacted, that his majesty shall make rules and orders, &c. for preventing the spreading of the distemper; and which by several subsequent acts of the 20th, 21st, 22d, 23d, 24th and 25th, was explained, enforced and continued, &c. shall except so much of the act of 23 G. 2. intitled, An act to continue several laws for preventing the spreading of the distemper amongst the horned cattle, and for empowering his majesty to prohibit the killing of cows, calves, and as relates to the empowering justices of the peace at the quarter-sessions to license persons residing within their respective counties or divisions, to buy and sell cattle; and which by two acts of the 26th and 27th of G. 2. were further continued until the 29th of Sept. 1754, are further continued unto the first of Sept. 1755, and from thence to the end of the next sessions of parliament. Stat. 28 G. 2.

Cities

Cities and corporations.

CITIES, corporations and borough towns, who have neglected to take the oaths of office, and to stamp their admissions, are indemnified from all disabilities and forfeitures, and none of their acts shall be questioned or avoided for the said omissions, provided such admissions be duly stamped on or before the 29th of Sept. 1755.

None shall be restored or intitled to any office or employment already avoided by judgment of any court of record, or filled up or enjoyed by another person, but the same shall remain to the persons now intitled thereto, as if this act had not been made. *Stat. 28 G. 2.*

None to bear any office for the government of any corporation, &c. that hath not received the sacrament in a year past; and to take the oaths of allegiance and supremacy, &c. *Stat. Car. 2. c. 1.*

If no mayor, &c. be elected in corporations at a time appointed, by the proper persons, the next in place to hold a court, and chuse one the day following, &c. or in default a writ of *mandamus* shall issue, requiring them to make election; and if any mayor voluntarily absent himself, he shall be imprisoned six months, and disabled to hold any office in the corporation. 11 G.

c. 4.

Cities and corporations.

Mayors to convict persons of drunkenness, who forfeit 5*s.* and tiplers 3*s.* 4*d.* or to be set in the stocks six hours. *Stat.* 4 *Jac.* 1. *c.* 5.

To inquire into unlawful games used by apprentices, &c. To commit offenders and search gaming-houses, which are liable to a forfeiture of 40*s.* *Stat.* 33 *H.* 8. *c.* 8.

Laws of the highways to be executed by the mayors and justices in corporations. *Stat.* 1 *G.* 1. *c.* 48.

Horses stolen, found in a corporation, to be claimed before the mayor, and on oath made of the property, order to be made for the delivery, paying what was given, &c. on sale. *Stat.* 31 *Eliz.* *c.* 12.

To punish orchard robbers, hedge breakers, &c. by whipping, &c. *Stat.* 43 *Eliz.* *c.* 7. See **Hedges.**

To hear and determine matters relating to servants, &c. To license labourers to go to another county, and to assess the wages of labourers, &c. at *Easter* sessions. *Stat.* 5 *Eliz.* *c.* 4.

To convict persons of profane swearing; labourers, common soldiers, common sailors and seamen 1*s.* every other person under the degree of a gentleman 2*s.* and 5*s.* if above. See title **Swearing.** *Stat.* 19 *G.* 2. *c.* 21.

To command constables near the sea coasts to call assistance for the salvage of a ship in danger of wreck. See **Wreck.** *Stat.* 12 *Ann.* *c.* 14.

Carriers.

Carriers.

JUSTICES of the peace in *Easter* sessions yearly shall rate the prices of all land carriages of goods to be brought into any place within their jurisdiction, and shall certify the rates so made to the mayors and other chief officers of the several market towns within their jurisdiction, to be hung up in several publick places, to which all persons may resort; and no common waggoner or carrier shall take for carriage above the rates so set, on pain of 5*l.* to be levied by distress by warrant of two justices, where such waggoner or carrier shall reside, to the use of the party grieved.

3 & 4 *W. & M.*

If any common waggoner or carrier shall demand and take any greater price for bringing goods to *London*, or to any place within the bills of mortality, than is allowed and settled by the justices for the place from whence the same are brought, shall forfeit 5*l.* to the party grieved, to be recovered as by the said act of 3 *W. & M.* or by distress and sale of his goods, by warrant from two justices of *Middlesex*, *Surrey*, *London* or *Westminster*.

The clerks of the peace in the country shall immediately after *Easter* sessions yearly certify to the lord mayor of *London*, and to the respective clerks of the peace for *Middlesex*, *Surrey* and *Westminster*, the rules made by the respective counties and places.

The

Churchwardens.

The justices of the counties of *Wilts, Gloucester, Oxford, Berks and Bucks*, are to assess the price of the carriage of goods from any place in their counties to any other place on the *Thames and Isis*, in boats, on the penalty of 5*l.* and double costs, on taking more than the price set.

In *London, &c.* carts not to carry more than twelve sacks of meal, twelve quarters of malt, seven hundred and a half of bricks, one chaldron of coals, &c. upon forfeiture of one of the horses. *Stat. 6 G. 1. c. 6.*

Churchwardens.

Churchwardens, how and when to be chosen.

CHurchwardens of every parish, and two or three householders, to be nominated in *Easter* week by two justices, as overseers of the poor: justices of the peace neglecting to nominate overseers of the poor, and mayors and head officers of towns, &c. shall forfeit 5*l.* to be employed towards the relief of the poor. *Stat. 43 Eliz. c. 2.*

Overseers are to meet once a month in their respective parish churches, to consider of ways to relieve the poor, and every one absenting himself from such meeting without lawful and just excuse, to be allowed by two justices, shall forfeit 20*s.* for every such neglect. These officers were created by the above statute of the 43d of *Eliz.* and was the first statute made for the relief of the poor; and

and they are so called, because they have the government of the poor.

Churchwardens are likewise to meet once a month with the overseers, or they may be punished, by which it appears they have a concurrent power and charge with the overseers.

By the said stat. 43 *Eliz.* the churchwardens are to be nominated yearly in *Easter* week, and by the stat. 1 *Jac.* 1. they are chosen by the joint consent of the minister and parishioners.

It has been a doubt, whether a justice of the peace can lawfully grant a warrant against overseers of the poor for neglect of meeting the rest of the overseers, according to the act above-mentioned, although it has been commonly done, and to levy the same by distress: but I do not apprehend there is any way of conviction set down in the said statute; therefore I apprehend it must be by indictment.

The same law must be, if they do not accept the office, set the poor at work, make rates to raise money, and place poor children out to be apprentices, and such like.

And it is safer to do it by way of indictment, because when the conviction is upon a traverse, two justices may send their warrant to levy the same according to the statute.

Where distresses are made for money justly due for the poor, no want of form in warrants for appointing overseers, or of distresses, or in the rate, nor irregularity of distraining, shall

Form in warrants of distress for the poor, not necessary.

shall make the party a trespasser *ab initio*.
17 G. 2. c. 38.

All assessments to be on the occupiers.

All assessments are to be made on the occupiers, and not on the lessors of the land; they ought to be equal, and laid on the visible real and personal estate in the parish, and not elsewhere. The direction of the statute is, to make it weekly (though it is said to be monthly, in the case of *Tracy and Talbot*).

Where a person took part of a house on the third of *December*, and was rated and distrained for a quarter's rent the *Christmas* following, on the general warrant for the whole; Held by *Holt Ch. J.* that this rule was illegal.

What a vestry is.

A vestry is the assembly of the whole parish met together in some convenient place for the dispatch of the business of the parish; and this meeting being commonly held in the place for keeping the priest's vestments, adjoining or belonging to the church, it has from thence the name of vestry. In former times the bishops and beneficed priests sat together in vestries to consult of the affairs of the church; in imitation of which the minister, churchwardens and chief men of parishes do at this day make a parish vestry. Anciently every parishioner who paid church rates, or scot and lot, had a right to come to these meetings; and when they who are so qualified are assembled at the time and place appointed, the major part of those present conclude all that are absent; and in the country this custom still prevails in most places.

In

In large and populous parishes, especially in and about *London* and *Westminster*, whether from attention to private affairs, or from tumultuous proceedings which happen in such assemblies, a custom has prevailed of yearly chusing a select number of the chiefest men to represent the rest for that year. Who are to be vestrymen.

But select vestries having been thought oppressive and injurious in some parishes, the power of them hath been contested; and not long since the select vestries of *St. Saviour* and *St. Olave* in *Southwark* were set aside and demolished; but the select vestry of *St. Mary Hill* in *London*, and of the parish of *Massam* in *Yorkshire*, on due proof of custom and usage, were allowed and confirmed in *B. R. Mich. 2 W. & M. 2 Latch 1027.*

By custom there may be a vestry chosen to have the government of a parish, make rates, and take accounts of churchwardens, &c. And vestrymen are a select number of the chief parishioners in every parish within the city of *London*, &c. who yearly chuse officers for the parish, and take care of its concernments, by statute; and these vestries are to make a declaration or acknowledgment, that they will conform to the liturgy of the church of *England* as by law established, &c. *Stat. 15 Car. 2. c. 2 & 5.*

In the election of vestrymen those that do not pay to the church rates have no votes, except the parson or vicar.

When any rates are made, the parishioners must have notice of a vestry held for that purpose, on the *Sunday* before any vestry is to meet; this notice ought to be given

given either in the church after divine service, or at the church door, both of the time and place of the assembly, and for what business; and it is usual for one of the church bells to be tolled half an hour before the vestry begins, and when the parishioners are met, the major part present conclude all the others; but to make their consent more authentick, it is necessary that every act by the vestry clerk be entered in the parish book, and that every man consenting set his hand thereto. 5 Rep. 66. 1 Mod. 194, 236. 2 Mod. 224.

An action on the case lies against a vestry clerk for shutting a parishioner out of the vestry room, who hath a right to be present and vote in the vestry at the making of rates, &c. for this action is the proper and only remedy, there being no breach of the peace or damage to the publick to have remedy by indictment or information: this was held by the court, though it was insisted that the action would not lie, because it encouraged multiplicity of actions against one person for the same offence, and the plaintiff ought to set forth some particular damage done him.

But the plaintiff is to shew a legal or prescriptive right in the parishioners to meet in the vestry, and set forth a right in himself to enter the room where the vestry was kept; for otherwise it may be the room of the defendant, where he hath no right to come. Pasch. 8 G. 1. *Phyllibrown and Ryland*, Mod. Ca. in Law and Eq. 354.

In several parishes there are different customs as to the electing, government and manage-

management of select vestries, which was the reason that in the statute made 10 *Ann. c. 11.* for the building fifty new churches in or near *London* or *Westminster*, there is a clause whereby five or more of the commissioners, with the consent of the ordinaty, are impowered by a writing under their hands and seals, to be inrolled in chancery, to name a sufficient number of the inhabitants of each new parish to be vestrymen thereof; and upon the death or removal, &c. of any vestryman, the rest or majority may chuse another, being an householder and inhabitant.

The parson has a right of sitting from his freehold in the church; but it does not give him a greater right or authority than any other member of the assembly; and it is a rule in our laws, that the major part in all elections have the right of determining for themselves. *Lord Fortescue 172.*

The power of adjourning a vestry is not in any single person, but in the whole body; by the opinion of *Lord Hardwicke. Ibid. 171.*

Vestries of parishes are to be consulted by churchwardens and overseers of the poor, and give their consent to the hiring of houses for the better employment and maintenance of the poor. *Stat. 9 G. 2. c. 7.*

Vestry clerk and beadle.

The vestry clerk is chosen by the vestry as their register or secretary, and he has the custody of all books and papers relating thereunto. Vestry clerk and beadle, how chosen.

The beadle of the parish is also one chosen by the vestry, whose business is to attend it, and generally to do and execute all the orders and business of the vestry and parish, as their messenger or servant: he is to assist the constables in taking up beggars, passing vagrants, &c. and where they are to be passed to a great distance, he is sometimes inserted among the overseers of the poor, &c.

In *London*, the beadles are assisting to the constables and watch in going the rounds at night, and other business.

Churchwardens.

Churchwardens are very ancient officers, and by the common law they are in the nature of a corporation, to take care of the goods of the church, the property whereof is in them, but they have nothing to do with the lands. 1 *Inst.* 3.

They are elected by the canon, 1 *Jac.* 1. by the joint consent of the minister and parishioners, in *Easter* week yearly; and if they happen to disagree, then the minister to chuse one and the parishioners another, unless there be a custom to the contrary, which must be observed. 2 *Roll. Abr.* 287.

Churchwardens, by whom to be sworn.

When a churchwarden is chosen by any particular custom, the archdeacon is to swear him, though the election be against the canon; and if he refuses, a *mandamus* lies to compel him. 3 *Cro.* 551.

An archdeacon refusing one that is chosen, and appointing another against the consent of

of the parish, the court of king's bench will issue out a special writ to the bishop to swear him; and a churchwarden being a temporal officer intrusted with the parish goods, the parishioners may chuse and put in trust whom they think fit. 1 Vent. 266.

The oath of a churchwarden.

YOU shall swear truly and faithfully to execute the office of a churchwarden within your parish, according to the best of your skill and knowledge, and present such things and persons as to your knowledge are presentable by the ecclesiastical laws of this realm.

So help you God.

The office of churchwarden continues till new churchwardens are sworn; and if they refuse to take the oath as the law directs, being duly elected, they may be excommunicated: before the churchwardens are sworn they can do no legal act as churchwardens, nor have they any authority; but whatever they do is of their own wrong.

Churchwardens by the stat. 43 Eliz. are to see that the parishioners come to church on a Sunday, and levy the penalty of 1s. for every offence, and 3s. 4d. for persons in ale-houses on a Sunday, &c. By the stat. 3 Car. 1. and 13 & 14 Car. 2. churchwardens, &c. have power to set up trades for employing the poor, to place out poor apprentices, and for settling, &c. poor persons; and by the stat.

F of

of the 9th of G. 1. they may purchase or hire workhouses for keeping and maintaining the poor of parishes; churchwardens to fix fire cocks, keep engines, &c. *Stat. 43 Eliz. c. 2.*

Church reparations extend to church yards, walls, the walls of the church and steeple, the floor and pulpit, pews and windows, &c.

Spiritual court may compel the parish to repair the church.

The spiritual court may, by their ecclesiastical censure, compel the parish to repair the church; but they cannot appoint what sums are to be paid for that purpose, because the churchwardens by the consent of the parish are to settle that.

Churchwardens may make rates themselves, if the parishioners are summoned, and refuse to meet.

Churchwardens to make their presentments twice a year.

Churchwardens usually make their presentments twice a year, whereof one time to be a week before *Easter*, when the old churchwardens are to leave their office, and the new ones are to be sworn, which they are not to be till the other have given in their presentments; and if they refuse, the parson or vicar may present, &c. They cannot be compelled to present oftener than once a year, except at the visitation of the bishop, and the register is to receive but 40 s. for every presentment.

An oath was tendered by the spiritual court to a churchwarden, to present according to the articles of the bishop, in which were many special things, as to present filthy talkers, &c. a prohibition was granted. *1 Vent. 114.*

But if the oath had been, to present according to the ecclesiastical laws, and the articles

ticles offered by way of direction, in such a case a prohibition ought not to go. 1 Vent.

127. Hard. 364.

Churchwardens cannot commence a suit in their own name after their year is expired, that if the suit had begun within the year, they might have proceeded in it after the year was out, it being *ex necessitate* to prevent people from delays, in order to wear out the year. So is *Danvers's Abridgment* and *Dr. Prideaux's Directions to churchwardens* 60, 61. *Strange's Rep.* 852.

Cannot commence a suit after their year expires.

In the case of the churchwardens of *Hammer-smith*, Mich. 1 G. 2. in B. R. the churchwardens were cited into the court of *Litchfield* to account; they pleaded they had accounted at the vestry according to law, which was rejected, and a prohibition was granted; for the ordinary is not to take the account, he can only give a judgment *quod computent*; and for what purpose should they be sent back to those who have taken the account already? The same rule was made in the exchequer Pasch. 2 G. 2. between *Haughton & al* churchwardens of *St. Alban, Wood-street*, and *Kendrick*. *Ibid.* 974.

The spiritual court has no jurisdiction to settle a churchwarden's accounts; and for that purpose, in the case of *Adams* against *Rush*, in B. R. a prohibition was granted after sentence, allowing the accounts, and on an appeal to the Arches. *Ibid.* 1133.

Every churchwarden is an overseer of the poor, although every overseer of the poor is not a churchwarden. 43 Eliz. c. 2.

See **Overseers** and **Settlements**.

Hackney coaches.

COACHMEN refusing to go at, or ex-
acting more for hire, than by the act is
limited, forfeit a sum not exceeding 3*l.* nor
under 10*s.* at the discretion of the commis-
sioners, three or more whereof are to deter-
mine the same, by 1 G. 1. c. 57.

The fare of a hackney coachman in *Lon-
don*, or within ten miles, is 10*s.* a day, al-
lowing twelve hours to the day; and by the
hour, not above 1*s.* 6*d.* for the first hour,
and 1*s.* for every hour after; and none are
obliged to pay above 1*s.* for the use of any
hackney coach for any distance which is not
above one mile and four furlongs, nor above
1*s.* 6*d.* for any distance not exceeding two
miles; a chair 1*s.* a mile.

If any person who shall drive a coach, or
carry a chair for hire, acting under a person
licensed, shall be guilty of misbehaviour by
demanding more than his fare, or giving
abusive language, or other rude behaviour,
he shall on conviction on oath forfeit not ex-
ceeding 20*s.* to the poor; and if he shall
not be able, or refuse to pay, he shall be
committed to *Bridewell* to be kept to hard
labour seven days, and receive the publick
correction of the house before he be dischar-
ged. 9 *Ann.* c. 23.

If any person shall refuse to pay, or shall
deface any coach or chair, any justice of the
peace may grant his warrant to bring him
before him, and on proof upon oath may
award

award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. *Stat. 9 Ann. c. 23.*

Discharges out of prison, and commitments to prison.

To the keeper of the house of correction at Clerkenwell, or his deputy. (Or if to New Prison, then say) To the keeper of New Prison, Clerkenwell, or his deputy.

Middlesex, } **D**ISCHARGE out of your
to wit, } custody the body of *L. B.*
if detained for no other cause than what is mentioned in my warrant of his or her commitment, dated the 15th day of *September* last; I having taken sureties for his personal appearance at the next general or quarter sessions of the peace, to be holden at *Hicks's-ball*, in and for the county of *Middlesex*; and for your so doing this shall be your warrant. Given under my hand and seal this day of *October* 1751.

Commitments, &c.

Commitment.

To the governor of the house of correction at Clerkenwell, or his deputy.

Middlesex, } **R**ECEIVE into your custody
to wit, } the body of *M. P.* herewith sent you, brought before me by *M. I.* constable of *St. Mary, Islington*, in the said county (*or as the place may be*) and charged upon the oath of *H. P.* his wife (*or as the case shall be*) for assaulting, beating and bruising her or him, and threatening her life (*or as the case shall be*); and him or her, for want of sureties, safely keep in your custody until he or she shall be discharged by due course of law. Given under my hand and seal this 5th day of *October 1751*.

Commitment to Newgate.

To A. B. one of the constables of the parish of C. and all and every the constables, and other officers of the peace for the said county, whom these may concern; and to the keeper of his majesty's gaol of Newgate.

Middlesex, } **T**HESE are in his majesty's
to wit, } name to command you, and every of you the said officers, forthwith safely to convey and deliver into the custody of the said keeper, the body of *L. D.* being charged
 before

before me, one of his majesty's justices of the peace in and for the said county, by the oath of *J. W.* for feloniously stealing (*here name the particulars*) the property of *J. W.* and you the said keeper are hereby required to receive the said *L. D.* and him in your custody safely to keep, until he shall be discharged by due course of law; and for your so doing this shall be to you, and every of you, a sufficient warrant. Given under my hand and seal this 20th day of Sept. 1751.

Commitment to Bridewell, or New Prison.

To the governor of the house of correction at Clerkenwell, or his deputy; or, To the keeper of New Prison, Clerkenwell.

Middlesex, } **R** ECEIVE into your custody
to wit, } the body of *T. B.* herewith
sent you, brought before me by *L. R.* constable of *H.* (*naming him*) and charged upon the oath of *W. A.* on a violent suspicion of having been concerned with *W. C.* and others, in divers felonies, and particularly for taking from the person of the said *W. A.* three guineas of the lawful money of this kingdom; and for further examination him safely keep in your custody, until he shall be discharged by due course of law. Given under my hand and seal this 20th day of Sept. 1751.

Commitments, &c.

To the governor of the house of correction at Clerkenwell, or his deputy; New Prison, Newgate, &c. as the justices please.

Middlesex, } **R**ECEIVE into your custody
to wit, } the body of *A. B.* herewith
 sent you, brought before me by *C. D.* constable of the parish of *I.* and charged upon the oath of *E. F.* for feloniously personating him the said *E. F.* proprietor of 100*l.* *South-Sea* stock, and of endeavouring to transfer the said stock, and to receive the money for the same, with intent to defraud the said *E. F.* contrary to the statute; and him safely keep in your custody, until he shall be discharged by due course of law. Given under our hands and seals the 20th day of *September 1753.*

R. G.
J. H.

Stat. 8 G. 1. c. 21, 22. two justices and one witness.

By the statute of 1 R. 3. c. 3. if goods of a suspected person for felony be seized before conviction, the seizer forfeits to the party grieved double the value, to be recovered by action of debt. 1 Rep. 171. 1 Latch 132. a declaration on this statute. Raym. 414.

Examinations, &c.

The examination of a witness relating to a felony; or more properly, the information of such a one.

Middlesex, } **T**HE information of *E. B.* of
to wit, } *C.* in the county of *Middle-*
sex, gentleman, taken before me, one of his
majesty's justices of the peace for the said
county, the third day of *August* 1751, upon
his oath deposeth as followeth:

That this informant on the 30th day of
July last past did see *C. D.* enter into the
house of *A. B.* of the parish of, &c. and from
thence did feloniously steal and carry away
one silver tankard, and also three silver spoons,
the property of the said *A. B.* And this in-
formant farther saith, that he endeavoured to
apprehend the said *C. D.* but there being no
other person in the house belonging to the
said *A. B.* the said *C. D.* then and there did
very much beat, and wounded this infor-
mant, and by that means made his escape
with the plate and goods aforesaid.

Sworn the day and
year abovesaid,
before me

The

The examination and confession of a felon.

Middlesex, } **T**HE examination and voluntary confession of *T. B.* taken before me, one of his majesty's justices of the peace for the said county, the fourth day of *Sept. 1751*, saith,

That he, together with one *W. N.* and *J. M.* on the second day of *September* last did rob a man in *Hatton-garden* of a hat and one pair of shoes, and sixpence in money; and that he, together with the said *W. N.* and *J. M.* did take, cut off, and carry away from a house in *Black-Boy Alley*, a quantity of lead, which they sold to one *G.* who keeps a house in *Fleet-lane*.

Taken before me
the day and year
abovesaid.

A certificate of convicting a person for bringing into the workhouse spirituous liquors, and paying 10l.

Middlesex, } **T**HESE are to certify, that to wit, } *J. A.* was convicted before me, one of his majesty's justices of the peace for the said county, on the 26th day of *December 1751*, on the oath of *H. W.* for bringing into the house of correction at *Clerkenwell Bridewell* spirituous liquors, and paid the sum of 10l. to the said *H. W.* one half of which
said

said sum was paid to him as the informer, and the other half was paid to him for the use of the house of correction, pursuant to the statute in this case.

The penalty is 20*l.* but the justice may moderate it to 10*l.* and no less; one half to the informer, and the other to the poor of the house of correction. *Stat. 25 G. 2.*

A certificate of convicting a person for bringing into the workhouse of Saffron-hill spirituous liquors, and commitment to Bridewell for want of payment of the penalty.

Middlesex, } **T**HESE are to certify, that
to wit, } C. F. was convicted before me, one of his majesty's justices of the peace for the said county, on the 19th day of July 1751, on the oath of R. S. for bringing into the workhouse of Saffron-hill, Hatton-garden, and Ely Rents in the said county, spirituous liquors, and for not paying the penalty pursuant to the statute, he was committed to Clerkenwell Bridewell for the space of one week, pursuant to the statute in that case. Given under my hand this 19th day of July 1751.

R. C.

The time is discretionary in the justice, but not to exceed three months. *Statute above.*

Commit-

Commitments, &c.

Commitment for bringing into the work-house of Saffron-hill spirituous liquors, upon the late gin act.

To the governor of the house of correction at Clerkenwell, or his deputy.

Middlesex, } **R**ECEIVE into your custody
to wit, } the body of C. F. herewith
sent you, brought before me by C. W. beadle
of the parish of *St. Andrew, Saffron-hill*, and
charged upon the oath of R. S. for bringing
into the workhouse of *Saffron-hill* spirituous
liquors; and for not paying the penalty pur-
suant to the statute, him for the space of a
fortnight safely keep in your custody. Given
under my hand and seal the first day of *Sep-*
tember 1751.

If a felon confesseth the fact upon exami-
nation, the justice must make him subscribe
his name or mark of his examination and
confession, and such confession may be given
in evidence, when proved upon oath, by the
justice or his clerk.

A justice may not detain in prison a per-
son suspected only, but during a convenient
time to examine him, which the law allows
to be three days. *Cro. Eliz. 829. Hil. 43*
Eliz.

A wife may not be examined or bound to
give evidence against her husband. *6 Co.*
But children may be examined against their
parents, and give evidence at the trial. *Dalt.*
408.

Exami-

Examinations taken on oath by justices of the peace in one county, may be by them certified in another county, and there read, and given in evidence against a prisoner.

Dalt. 544.

The examination of a felon.

Middlesex, } **T**HE examination and voluntary confession of *A. B.* taken before me, one of his majesty's justices of the peace for the said county, on the sixth day of *September* 1754.

The said *A. B.* being charged before me by *C. D.* of, &c. with the feloniously stealing out of the house of the said *C. D.* in, &c. the several goods, viz. (*here name them*) to the value of, &c. on, &c. last past, or he the said *A. B.* upon his examination now taken by me denieth that he stole the said goods, or ever had them in his possession, or confesseth that he stole the said goods, and sold them to, &c. for, &c. and further saith not. *Stat.* 2 & 3 P. & M. c. 3.

These examinations are to be taken before any offender shall be committed.

The information of the witnesses must be taken severally and upon oath. 2 & 3 P. & M. c. 10.

All justices of the peace, when they commit a prisoner for stealing any thing of small value, that they examine the prosecutor as to the value of such goods, and specify the same in their warrant of commitment, that
it

Commitments, &c.

it may appear whether the said goods are of one shilling value; more or less. Because when the theft is under 12*d.* it is termed petit larceny, and is punished with whipping; and the jury may find the goods of less value, although a man be indicted for things worth 40*s.*

Persons deceitfully getting into their hands money or goods by colour of false tokens, shall have such punishment by imprisonment, pillory or corporal pain, as the persons before whom he shall be convicted shall think fit. 33 *H. 8. c. 1.* 1 *Cro. 83, 130.*

Two justices of the peace may bind over to the sessions or assizes any suspected persons, or may imprison or bail them until the next sessions.

One justice of the peace may bind cheats to their good behaviour; and so to the assizes or sessions, or send them to the house of correction, especially by order of sessions. *Dalt. 63.*

If a man cheats and cozens at play with dice, the person cheated may arrest him, and carry him before a justice of the peace, who is to bind him over to the sessions, and there he is to be tried and punished; and if he brings an action, he who arrests him may justify; as all the courts held. *Mich. 7 C. 1.* *Cro. Car. 234.* 1 *Jac. 249.*

The statute of 1 *R. 3.* is but an affirmance of the common law; for there is a writ to deliver the goods upon security given, and is grounded upon this reason, that the felon may have something to support himself in prison. See *Stat. 25 Ed. 3. c. 14.* *Raym. 414.*

If a felon doth not fly, but is apprehended with the goods, the owner shall have them; but if he flies, and fresh pursuit is made, and he waves the goods, and they are taken up, and carried away before the owners come, the property is altered by the seizure, and vested in the lord of the manor: but if the pursuit was always in view of the felon, it is otherwise. *Het. 65.*

The examination of a person robbed on the highway.

Middlesex. **T**HE examination of *R. L.* of to wit, *S. J.* in the said county, taken upon oath before me, one of his majesty's justices of the peace for the said county, on the 25th day of September 1752.

This examinant saith, that on Tuesday the 9th day of this instant September he was assaulted in the highway leading from *D.* to *W.* at or near a place called *T.* about ten of the clock in the morning of the same day, by three men on horseback, who seized this examinant, and carried him out of the road to a bye place adjoining, and robbed him of the sum of 9*l.* and his horse. And farther saith, that he is since informed that the said highway and bye place are both in the parish of *B.* and within the hundred of *M.* in the said county; and that he did not then, nor yet doth know either of the persons who committed the said robbery.

Sworn the day and year
aforesaid before me.

R. C.

Stat.

Commitments, &c.

Stat. 2 E. 3 P. & M. c. 10. 2 Eliz. c. 13.

See *stat. 2 G. 2.* how an action must be brought to charge the hundred for such robbery.

A detainer to the keeper of Newgate for one being concerned with others armed with fire arms, and other offensive weapons, in running of goods, &c.

To the keeper of his majesty's gaol of Newgate, or his deputy.

Middlesex, } **D**ETAIN in your custody the
to wit, } body of *H. W.* late of *B.*
 in the county of *Suffolk*, labourer, being amongst others armed with fire-arms, and other offensive weapons, after the 24th day of *July* 1746, assembled in order to be aiding and assisting in the running, landing or carrying away prohibited or uncustomed goods, and being by his majesty's order in council, of the 15th of *January* 1756, required amongst others to surrender themselves within the space of forty days after the first publication thereof in the *London Gazette*, to the lord chief justice, or one other of his majesty's justices of the court of king's bench, or to one of his majesty's justices of the peace; and the said *H. W.* being by reason of his not surrendring himself pursuant to the said order, but neglecting or refusing so to do, by virtue of the statute in that case made and provided, adjudged, deemed and taken to be convicted and attainted of felony,
 and

and to suffer pains of death, as in cases of a person convicted and attainted by verdict and judgment of felony, without benefit of clergy, the said offence being charged to have been committed in *England*: these are therefore to require you to detain in your custody in the said prison the body of the said *H. W.* and him there safely keep, until he shall be from thence discharged by due course of law. Given under my hand and seal this 24th day of *July* 1749.

H. F.

Stat. 19 G. 2. c. 34.

If after the time appointed by the act for any such person's surrendring himself, any person shall harbour him, he shall be transported for seven years. *Stat. above.*

To, &c.

Middlesex, } **D**ETAIN in your custody the
to wit, } body of *A. B.* he being further charged upon the oath of *C. D.* for feloniously stealing and taking from the person of *C. D.* (*here name the particulars*) and him safely keep in your custody, until he shall be discharged by due course of law. Given under my hand and seal this 21st day of *October* 1751.

Examinations of felons, &c.

BEFORE any commitment of felons, examinations must be taken of the witnesses, to prove such felonies, on oath; and the felon may likewise be examined, but not on oath, and he must sign his confession.

The examination must be in writing, and it must be certified to the next sessions or assizes, or else the justice may be fined by the judge. If a small felony, then to the sessions. *Hawk. P. C.* 262, 263.

It may be given in evidence at the trial, though the party that gave information of the felony be dead; but then the justice's clerk should be sworn to the examination, or the justice himself: but it is said, it is not sufficient to convict, unless the person accused confess the same at his trial; yet *Dalton* mentions a conviction upon it without any farther evidence. *Dalt.* 166.

In the case of *Phillips* and *Stubbs*, indicted for high treason, it was resolved by all the judges, that if a traitor is examined before a justice of peace or privy council, or confesseth the treason, and should afterwards deny it, yet two witnesses who can prove such confession, are good evidence. *Stat. 2 & 3 P. & M. c.* 10.

Commitment or Mittimus, what.

A *Mittimus* or commitment is the warrant by which the prisoner is sent to, and detained in prison, &c.

It must be in writing under hand and seal.

The names of the parties committed, the time of making it, the cause of commitment, and the prison to which the party is committed; must be expressed in it; as, for treason, felony, or for suspicion thereof; and it must contain the special nature of such treason or felony briefly; as, for felony, for the death of J. S. &c. or for burglary, for breaking the house of L. S. &c. and the reason is, because it may appear to the judges of the king's bench, upon a *habeas corpus*, whether it be felony or not. 3 H. 7. c. 3. Dalt. 439. Hale's Hist. P. C. b. 2. p. 120.

It must have an apt conclusion, as thus; *The prisoner safely to keep, until he be delivered by due course of law*: but then that general conclusion is not always good; as where the prisoner is committed for not doing something ordered or enjoined by some statute, as to find sureties, or the like; for then the *mittimus* must conclude accordingly, and great care is to be taken of this, otherwise the warrant is void. 2 Co. Inst. 591.

If the *mittimus* is for felony, and the felon hath confessed the felony upon his examination, it ought to be expressed in the *mittimus*.

Commitments, &c.

Note; For offences at common law the general conclusion of a *mittimus* will be right; but for offences created by a particular statute, it ought to conclude according to the direction of that statute. *Ibid.*

Commitment for forging a note.

To the governor of the house of correction at Clerkenwell, or his deputy.

Stat. 2 G. 2. *Middlesex,* } **R** ECEIVE into your custody
to wit, } the body of *E. D.* herewith
sent you, brought before me by *J. S.* constable of the parish of *L.* and charged upon the oath of *A. M.* with feloniously making, forging and counterfeiting, at the parish of *L.* in the said county, a certain paper writing, purporting to be a promissory note, made by the said *A. M.* for the payment of 13*l.* 13*s.* to *J. P.* or order, for value received, and indorsing the same with the name of *J. P.* and feloniously uttering and publishing as true the said forged note, with intent to defraud the said *A. M.* contrary to the statute; and him safely keep in your custody, until he shall be discharged by due course of law. Given under my hand and seal this 20th day of *August* 1751.

Commit-

Commitment for buying several stolen watches, and other things.

To the governor of the house of correction at Clerkenwell, or his deputy.

Middlesex, } **R** ECEIVE into your custody
to wit, } the body of *A. C.* herewith
 sent you, brought before me by *M. P.* constable of *S. J.* and charged on oath, in an information of *J. S.* for feloniously buying and receiving several watches and other plate to a considerable value, he the said *A. C.* well knowing them to be stolen and feloniously obtained; and him safely keep in your custody, until he shall be discharged by due course of law. Given under my hand and seal this 22d day of *Sept.* 1751.

Note; If a felon is not able to pay the charge of carrying him to prison, that then an indifferent tax or assessment shall be made by the constables and churchwardens, and two or three other honest inhabitants of the parish, where such offender shall be taken; the said taxation being allowed under the hand of one or more justice or justices of the peace: and if any so taxed shall refuse to pay their said taxation, then the justice or justices near adjoining shall give warrant to the said constable, &c. to distrain the goods so assessed, and by appraisement of four substantial inhabitants of the said place, to sell a sufficient quantity of such goods, and the overplus, if any, to return to the owners, &c.

*Commitment to Bridewell for not paying
4s. for swearing four profane oaths.*

*To the governor of the house of correction at
Clerkenwell, or his deputy.*

Middlesex, } **R** ECEIVE into your custody
to wit, } the body of *M. C.* herewith
sent you, brought before me by *S. P.* con-
stable of the parish of *S.* and charged upon
the oath of *J. B.* for swearing four profane
oaths; and for non-payment of the sum of
4s. or giving security to pay the same, tho'
demanded pursuant to the statute in that case
made and provided, him for the space of ten
days you safely keep to hard labour in your
custody. Given under my hand and seal this
20th day of *March* 1752.

See Curling and swearing.

A commitment to Newgate for treason.

*To the keeper of his majesty's gaol of New-
gate.*

Middlesex, } **R** ECEIVE into your custody
to wit, } the body of *C. B.* herewith
sent you, brought before me by *J. S.* and
charged on the oath of *W. R.* for high trea-
son, in feloniously and traiterously counter-
feiting the current coin of this kingdom; (or
if for levying war, then say) for conspiring to
levy war against his majesty; (or as the case
shall

shall be) and him safely keep in your custody, until he be discharged by due course of law. Given under my hand and seal this 27th day of *Sept.* 1751.

The information thereupon.

Middlesex, } **T**HE information of *A. B.* of
to wit, } the parish of *L.* in the said county, yeoman, taken on oath before me, one of his majesty's justices of the peace for the said county, the 2d day of *Sept.* 1751.

This informant on oath saith, that on the 27th day of *August* last past, in the house of *C.* situate in *F.* in the said county, known by the sign of the *C.* in the parish of *L.* *E. C.* silversmith, had in his possession divers moulds and tools made use of in clipping and coining of money; and that he, this informant, saw the said *E. C.* coin six silver shillings and four silver pences, in imitation of the king's coin; and this informant further saith, that he saw the said *E. C.* offer two shillings thereof in payment to *J. L.* of *S.* in the said county, who refused the same, as justly fearing they were counterfeited.

A. B.

Sworn the day and
year abovesaid,
before me

Commitments, since the *habeas corpus* act, are now more necessary than in former times, because the prisoner may be admitted to bail upon the above *habeas corpus* act, whatsoever his offence may be.

G 4

Constable.

Constable.

Oath for the peace and good behaviour.

YOU shall swear that you are in fear of your life, or some bodily hurt to be done, or to be procured to be done to you by J. L. and that you do not require the peace of him for any malice, vexation or revenge, but for the causes aforesaid.

This being done, the justice may grant his warrant to bring the party before him, &c.

The oath of a constable or headborough.

YOU shall swear that you shall well and truly execute the office of a constable, (or if a headborough, then say) headborough for the town, (or if for a parish, then say) for the parish of C. for the year ensuing, or until another shall be sworn in your room, or until you shall be legally discharged thereof.

This oath is now administered for shortness.

In some large parishes there are and may be several officers, called by the several names of constable, headborough, and the like; yet their offices in their several precincts are in effect one and the same, the name being only changed.

By

By the stat. 14 Car. 2. it is ordained, that upon the death or removal of any constable, any two justices may elect and swear another, to continue till the next leet or quarter-sessions.

This office ought not to be put on the poorer sort.

These officers are to be chosen in respect of their habitation or residency; and not in respect of their lands.

If a constable, being lawfully qualified and chosen, refuses, the justices may bind him over to the assizes or sessions, there to be indicted; and if chosen in a leet, and refuse, he may be fined there. *Dalt.* 47. If he refuses, when chosen, to be fined.

But in other cases the justices are not to meddle, either in sessions or out, but leave it to the custom of the court-leet. *Styl. Rep.* 362. May be chosen at the sessions or leet.

Heretofore it was doubted, whether a constable could make a deputy; but now it is agreed he may make a deputy. *1 Sid.* 355. *Moor* 844. *1 Cro.* 407. *Crawley's* case.

When a constable hath arrested a person, he may imprison him in the stocks, or in a house, till convenient to bring him to the justice. *2 Ed.* 4. c. 9. The duty and office of a constable.

And when he hath brought him to the justice, yet he is in law still in his custody, till either the justice discharge, bail, or commit him to gaol. *10 H.* 4. 7. *Hale's P. C.* 116.

And by the custom of the city of London, a constable may exercise his authority throughout the city; though constables are not named in the stat. 27 Eliz. yet that statute hath relative words to the city of London; and though

though constables are not named in the statute, yet other peace-officers being named, he shall be comprehended.

Westminster doth not prescribe to execute warrants as the city of *London*.

The constable may justify the detaining an offender for a day without warrant, the justice not having an opportunity to examine such prisoner; this is to be supposed to be felons. *Moor* 408.

This is the power and duty of a constable at common law.

Sir *Francis Bacon*, in treating of the original and duty of the office of constables says, that their authority was grounded upon the ancient laws and customs of the kingdom long before the conquest, and intended and instituted for the preservation of the peace.

The several offices of constable, headborough, borough-head, borsholder, tithingman, &c. are in effect but two, that of constable and headborough; and both signify one and the same thing.

Constables of hundreds were appointed by the common law, by the statute of *Winton*, 13 *Ed.* 1.

High constables are now appointed over each hundred, and petty constables are appointed in each town, village and parish of every hundred, to be assisting to the high constable.

High constables may be chosen either at the quarter-sessions, or in the court leet by the steward himself, or by presentment of the grand jury; but this must be warranted by custom,

custom, and in such cases the justices cannot interpose.

If present when chose, and does refuse the office, the steward may fine him; if absent, the homage may present his refusal at the next court, and then amerce him; also if he be present, and accept the office, he may be sworn in the leet; if absent, upon notice given by the steward, must take the oath before a justice; but you cannot distrain for the penalty without a custom.

Where neglects are in keeping such courts, or chusing them, the justices at their quarter-sessions may appoint and swear high constables; and this is the usual course at this time; but in case of refusal, death or removal, one justice of the peace may chuse and swear another. *11 Car. 1. B. R.* But this law is since altered by the stat. *14 Car. 2.*

If the leet neglects to chuse constables, the sessions may, or in case of death two justices may.

This office is to continue for one year, and if longer, the justices in their sessions may discharge him. *1 Raym. 69.*

The sessions may remove a high constable, as well as a petty constable.

Where a leet is orderly kept, and there is due election of this officer, and no neglect, there the justices are not, in or out of their sessions, to meddle; and if they should remove a constable settled by the leet, the leet may put him in again, and the king's bench must then decide the difference. *Trin. 9 Jac. 1. Style Rep. 362.*

The justices may also make high constables of hundreds, where there is not a leet, for the hundred that hath constantly done it. *Trin. 9 Jac. B. R.*

Anciently

Anciently both high and petty constables were appointed and sworn by the sheriff in his turn; and if a constable died, his place was to be supplied by the leet or justices of the peace.

Constables of parishes to return lists of persons to serve on juries.

Constables of parishes at *Michaelmas* quarter-sessions yearly are to return to the justices of the peace there, lists of the names and places of abode of persons qualified to serve on juries, between the age of twenty-one years and seventy, attested upon oath, on pain of forfeiting 5*l.* and the justices of the peace shall order the clerk of the peace to deliver a duplicate of those lists to the sheriff, &c. from which they are to make their panels of jurors. But no sheriff or bailiff, &c. shall return any to serve on a jury, unless he hath been summoned six days before the day of appearance, &c. *Stat. 3 G. 2. c. 25.*

Constable not in the execution of his office may be resisted.

If a constable is not in the execution of his office, his staff does not give him a licence to do what he pleases; as, if he is not in the execution of his office, but breaking the peace, then surely he may be resisted.

The lord chief justice *Holt*, in giving judgment in the case of *The queen* and *Tooly and others*, said that it was not only to make a case of constable murder, that the constable is in the execution of his office, but he must give notice that he is come to keep the peace, and cited *Thomson's* case, *Keiling* 66. And so are *Young's* and *Mackally's* case understood, 9 *Rep.* 65. for if he does not give notice, the party may reasonably suppose that he comes to assist his adversary.

If

If one is imprisoned upon an unlawful act, it is a sufficient provocation to all the subjects of *England*, and said a constable cannot arrest but where he sees an actual breach of the peace; but if the affray be over, and things quiet, he cannot arrest. 3 *Cro.* 370. *Stat.* 30 *H. 7. c.* 10.

After the 24th of *June* 1751, no action is to be brought against a constable, headborough, or other officer acting by his order, &c. for any thing done in obedience to any warrant under the hand and seal of any justice, until demand hath been made or left at his usual place of abode by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by shewing the said warrant, and permitting a copy to be taken by the party demanding the same, any action is brought against such constable, &c. without making the justice or justices who signed or sealed the warrant against the defendant or defendants, that on producing or proving such warrant at the trial to the jury, the jury is to give their verdict for the defendant, notwithstanding any defect of jurisdiction in such justice: and if such action is brought jointly against such justice, and also against such constable, &c. acting in his or their aid as aforesaid, then on proof of such warrant the jury is to find for such constable, &c. and for such person or persons so acting

How actions are to be brought against constables.

as aforesaid, notwithstanding such defect of jurisdiction in such justice: and if the verdict shall be given against the justice, the plaintiff or plaintiffs is to recover costs against him, to be taxed in such manner as include such costs as such plaintiff is liable to pay to such defendants, for whom such verdict shall be found.

And where the plaintiff, in any such action against any justice, does obtain a verdict, in case the judge before whom the cause is tried does in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff is to have double costs of suit. *Stat. 24 G. 2.*

Constable, &c. not to be sued till he refuses a sight and copy of the warrant.

And no action is to be brought against any justice of the peace for any thing done in the execution of his office (or against any constable, &c. or person acting as aforesaid) unless the same be brought within six calendar months after the act committed. *Stat. abovesaid.*

By the statute of the 3d of *Jac. 1.* every malefactor was to bear his own charge, and of those that conveyed him to gaol; and if he refused so to do, his goods might be distrained and sold; and if he had no goods, the constable and churchwardens of the parish where the offender was taken, were to pay the same. That so much of the said act, as relates to the taxing of the parish where the offender was taken, for defraying the charges of their conveyance to gaol, is repealed

pealed by the statute of the 27th of G. 2. which statute enacts, that from and after the 24th day of June 1754, when any person not having goods or money where he is taken, sufficient to bear the charges of himself and those that convey him, is committed by warrant of any justice to gaol, or house of correction, any justice for the county, upon application of the constable or other officer who conveyed him, shall upon oath examine into and ascertain the reasonable expences for such conveyance, and grant a warrant *gratis* on the treasurer of the county or place for payment thereof, and he is to be allowed it in his accounts. Stat. 27 G. 2.

That from and after the said 24th of June 1754, when any poor person shall appear upon a recognizance to give evidence to any grand or petty larceny, or other felony, the court at the prayer and on the oath of such person, and in consideration of his circumstances, are impowered to order the treasurer of the county or place wherein the offence was committed, to pay such sum as they shall think reasonable for his time, trouble and expence, and the proper officer of the court is to make out and deliver such order on being paid sixpence; and the treasurer is to pay the same forthwith on delivery of the said order, who is to be allowed it in his accounts.

No order or warrant may be made by any court or justice on the treasurer of the county of *Middlesex*, for payment of the expences of conveying offenders to gaol, or of persons appearing on recognizances to give evidence

as aforesaid; but within the county of *Middlesex* the expences of the constable or other officer, occasioned by his conveying of any person to gaol by virtue of any warrant from any justice of the peace (after the same have been examined into upon oath, and allowed by such justice, and for which no fee is to be taken) shall be paid by the overseers of the poor of the parish where the person was apprehended, and the same shall be allowed in his accounts. *Stat. 27 G. 2.* see the statute at large. See the stat. 25 G. 2.

Houses of correction.

JUSTICES of the peace in sessions have power to order houses of correction to be built, to make orders for governing them, and to see that offenders sent thither be set at work or punished; they are to be built at the charge of the county. *Stat. 39 Eliz. c. 4.*

And by the stat. 1 *Jac. 1. c. 7.* there is to be a house of correction in every county, or the justices shall forfeit 5*l.* each. Masters of these houses to set on work and correct persons by whipping, and to have such allowances as the justices shall think fit; and to give an account of persons committed quarterly.

A justice of the peace may send a rogue, vagabond or incorrigible person to the house of correction in the county, &c. where he dwells;

dwells, or to any other house of correction in the next county, &c. as shall be most convenient for passing such rogue, &c. *Stat. 14 G. 2. c. 33.*

Justices of the peace of any liberty, city, &c. whose inhabitants contribute to the support of the house of correction of the county in which such liberty, &c. is, may commit offenders to the house of correction of such county. *Stat. 15 G. 2. c. 24.*

On presentment of the grand jury, that there is no house of correction, and that it is necessary to provide one, or that the house of correction is out of repair, or should be enlarged, or one or more houses added, the justices may build, enlarge, buy, or hire houses, or may purchase lands, and erect houses of correction, and see that proper necessities be provided; and two of them are to visit the houses of correction twice a year, and report the state thereof at the next general or quarter sessions. And if the masters of such houses shall be remiss in their duty, the justices may fine them, and may appoint masters, and make orders for the better regulation of such houses. *Stat. 17 G. 2. c. 5.*

Corn.

IF any person sell corn otherwise than by *Winchester* measure sealed, and stricken by the brim, shall forfeit 40s. on conviction before one justice on oath of one witness, to be levied by the churchwardens and overseers, or some or one of them, to the use of the poor, by distress and sale, and in default of distress, imprisonment till paid. *Stat. 22 Car. 2. c. 8.*

Every person who shall sell or buy corn without measuring, or in any other manner than is by 22 *Car. 2.* directed, and that without shaking by the buyer, shall beside the penalty of the above act, forfeit all the corn so bought, or the value thereof, to the party complaining. *Stat. 22 & 23 Car. 2.*

Upon complaint to a justice of the peace, that corn hath been bought, sold or delivered contrary to the above act, the proof shall lie upon the defendant to make it appear by the oath of one witness, that he bought or sold the same lawfully; but if he fail, he shall forfeit as above, to be levied by distress and sale, to be distributed by the justice, one half to the poor, and the other to the informer. *Stat. 22 & 23 Car. 2.*

Corn may be transported to states in alliance, when wheat exceeds not the price of 32s. rye 20s. malt 16s. &c. the quarter. *3 Car. 2.*

The stat. 15 *Car.* 2. settles the prices of corn for transportation; wheat at 48*s.* the quarter, barley and malt 28*s.* rye, peas and beans 32*s.* oats 13*s.* 4*d.* paying 5*s.* 4*d.* *per* quarter custom for wheat, 4*s.* for barley or malt, oats 2*s.* &c.

By the stat. 22 *Car.* 2. all persons may transport all sorts of corn, though the prices exceed those above, paying the duties.

Persons transporting corn, when malt or barley is at 24*s.* *per* quarter, rye at 32*s.* wheat 48*s.* or under, to receive from the collector of the customs for every quarter of malt 2*s.* 6*d.* rye 3*s.* 6*d.* wheat 5*s.* and pay no custom. *Stat.* 1 *W. & M.* c. 12.

Justices of the peace to ascertain the price of corn for which a bounty is to be allowed for exportation. *Stat.* 25 *G.* 2.

No sort of corn, meal, flour, &c. may be exported to foreign countries, unless by the king's proclamation, under the penalty of 20*s.* for every bushel of corn, and 12*d.* for every pound weight of meal. *Stat.* 14 *G.* 2. c. 3. 15 *G.* 2. c. 35.

Coroner.

A Coroner is an ancient officer of this realm, that deals wholly for the king and crown: there are generally four coroners in a county; in some counties fewer, and in some but one, according to usage; and they are elected at the county court in full county,

Coroner, how
chosen.

by the freeholders, upon the king's writ, and returnable into the chancery. 2 *Hawk.* 43, 44.

They are to be men of good ability, and have lands in fee in the county where chosen to answer all people, and if insufficient, the county shall answer for them: there are also special coroners within divers liberties, as well as the ordinary officers in every county; as the coroners of the verge, which is a certain compass about the king's court, &c. and some corporations and colleges are licensed by charter to appoint their coroners within their precincts. 2 *Inst.* 174. 4 *Inst.* 271.

Being chosen by the county his office continues, notwithstanding the demise of the king. 4 *Inst.* 271.

A judicial and ministerial officer, and why.

Their authority, like that of sheriffs, is judicial and ministerial: judicial, where one comes to a violent death, and to take and enter appeals of murder, pronounce judgment upon outlawries, &c. and they are to inquire of the lands and goods and escapes of murderers, of treasure trove, wreck of the sea, deodands, &c. The ministerial authority is, where coroners execute the king's writs on exception to the sheriff, as being party to a suit, kin to either of the parties, and on default of the sheriff, &c. and as ministers, coroners must all join in their acts; but as judges, they may divide and act separate. On the defaults of sheriffs, coroners are to impanel juries; and in case of two coroners, if one is challenged, the other may execute the writ, &c. yet both make but one officer. 4 *Inst.* 271. 4 *Rep.* 79. 9 *Rep.* 119.

After

After he is chosen, he shall be sworn by the sheriff for the due execution of his office.

2 Hale 55.

As the sheriff in his turn might inquire of Of what he is all felonies by the common law, saving the to inquire.

death of a man, so the coroner can inquire of no felony but of the death of a person, and that *super visum corporis*. When the coroner hath notice given him of a person slain or suddenly dead, he is to go to the place where, and shall by his warrant to the bailiffs, constables, &c. summon a jury out of the four or five neighbouring towns or villages, to make inquiry upon view of the body; and the coroner and jury are to inquire into the manner of killing, and all circumstances that occasioned the party's death, as who were present, whether the dead person was known, where he lay the night before, &c. and examine the body, if there be any signs of strangling about the neck, or of cords about the privy members, &c. also all wounds must be viewed, and inquiry made with what weapon. Stat. 4 Ed. 1. 4 Inst. 271.

And to discover the truth, the coroner To send for may send his warrant for witnesses, and take witnesses, and their examination in writing; and if any ap- take examina- pear guilty of the murder, he shall inquire tions. what goods and lands he hath; and then the dead body is to be buried. A coroner may likewise commit the person to prison, who is by his inquisition found guilty of the murder, and the witnesses are to be bound by recognizance to appear at the next gaol delivery or assizes, &c. When the jury have

brought in their verdict, the coroner is to enrol and return the inquisition, whether it be murder, manslaughter, &c. to the justices of the next gaol delivery of the county, or certify into *B. R.* where the murderer shall be proceeded against. If a coroner doth not come to inquire, having notice of the death of any person, he may be fined and imprisoned by the justices, and he may be fined and imprisoned for not certifying his recognizances, and the evidence and inquisition taken before him, to the court where they ought, and not to take for his fees above *13s. 4d.* of the goods of the murderer, or out of the amerciements of the vill for the escape, if he be gone; justices of the peace have power to inquire of escapes. *3 H. 7. c. 1. 3 Inst. 91.*

Where a person is slain by misadventure, the coroner is to take no fee, on pain of *40s.*

Justices of the peace, &c. may inquire and punish defaults and extortions of coroners. *Stat. 1 H. 8. c. 7.*

If a body be interr'd before he come, to be digged up. The coroner can take indictments of death only upon view of the body, and not otherwise; therefore if the body be interred before he come, he must dig it up; and this he may do lawfully within any convenient time, as within fourteen days. *Hale's P. C. 170.*

If a body cannot be viewed, the coroner can do nothing; but the justices of the peace shall inquire thereof. *Ibid.*

If a body be drowned, and cannot be found to be viewed, the inquisition must be taken by justices of the peace on examination of witnesses.

witnesses. A coroner's inquest may be quashed, whereupon he is to make a new one, and for mismanagement in filing of the inquisition, it may be stopt; if he hath been guilty of bribery, &c. commissioners may be ordered to take a new inquisition on the testimony of witnesses. 5 Rep. 110. 1 Mod. 82. 3 Ed. 1. c. 9.

By the stat. 4 Ed. 1. called the statute *de officio coronatoris*, if they know where the person was slain, whether it were in any house, field, bed, tavern or company, who were culpable, either of the act or of the force, and who were present, either men or women, and of what age soever they be, if they can speak, or have any discretion; and how many soever be found culpable, they shall be taken and delivered to the sheriff, and shall be committed to the gaol.

Also by the same statute all wounds ought to be viewed, the length, breadth and deepness, and with what weapon, and in what part of the body the wound or hurt is, and how many be culpable, and how many wounds there be, and who gave the wound.

He must hear evidence on all sides upon oath, if offered.

When the coroner hath inquired upon every thing, he shall go to the house of the murderer, and shall inquire what goods he hath, what corn he hath, and what lands he hath, and what it is worth yearly; and then he shall cause all the land, corn and goods to be valued, and thereupon they shall be delivered to the whole township, who shall be answerable before the judges for all.

To inquire what goods and chartels the murderer had.

Whether the
person found
guilty fled.

He shall inquire also whether the person found guilty fled; for which flight they forfeit goods and chattels. 2 *Hawk.* 48, 53.

Horses, boats, carts, and the like, whereby any are slain, are called deodands; they shall also be valued, and delivered as above. 4 *Ed.* 1. c. 2.

All which must be inrolled in the rolls of the coroner. 4 *Ed.* 1.

And the sheriffs shall have counter rolls with the coroner of things belonging to their office. 3 *Ed.* 1.

It is not necessary that the inquisition be taken in the very same place where the body was viewed; but they may adjourn to a place more convenient. 2 *Hawk.* 48.

Upon those things being inquired of the bodies of such persons so dead or slain, the body shall be buried. 4 *Ed.* 1. c. 2.

To inquire of
accessaries be-
fore the fact,
but not after.
And of per-
sons who die
in gaol.

He may inquire of accessaries before the fact, but he cannot inquire of accessaries after the fact. 2 *Hawk.* 48.

He ought likewise to inquire of the death of all persons who die in prison, that it may be known whether they died by violence, or any unreasonable hardships; for if a prisoner by duress of a gaoler comes to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. 3 *Inst.* 52, 91.

What fees he
is to take.

By the statute of the 25th of G. 2. c. 29. the coroner for every inquisition (not taken upon the view of a body dying in gaol) shall have 20s. and also 9d. for every mile he shall be compelled to travel from his usual place of abode to take such inquisition, to be

be paid by order of the justices in sessions out of the county rates, for which order no fee shall be paid.

For every inquisition taken on the view of a body dying in prison, he shall be paid so much, not exceeding 20 s. as the justices in sessions shall allow, to be paid in like manner.

No coroner of the king's household and of the verge, nor of the admiralty, nor county palatine of *Durham*, nor city of *London*, and borough of *Southwark*, nor any franchises belonging to the said city, nor any city, town or franchise not contributing to the county rates, or within such rates have not been usually assessed, shall be intitled to any benefit by this last above act; but they shall have such fees and salaries as they were allowed before this act.

The exception in the act relating to coroners.

The coroner ought to execute his office in person, and not by deputy, for he is a judicial officer; otherwise he shall incur the penalties for remissness or neglect of duty.

To execute his office in person.

The oath of a coroner administered by the Sheriff.

YOU shall swear that you will well and truly serve our sovereign lord the king and his people in the office of a coroner, and of one of his majesty's coroners for this county of *M.* and therein you shall diligently and faithfully do and execute all and every thing and things belonging to your said office, according to the best of your knowledge and power, both

The oath.

both for the king's profit and the good of the people within the said county, according to the directions of the statutes or acts of parliament in that case made, taking such fees as you ought, and without taking any bribes, or fees more than the said acts do allow.

So help you God.

The charge to be given to the jury upon the view of the dead body.

His charge,
what to con-
sist of.

It consists in setting forth what homicide is; that homicide is the slaughter of the body, and that is the king's part, and that must take his end by due execution of law against the offender.

Homicide is *in facto* fourfold; that is to say, in execution of justice, homicide willingly done, homicide done by chance, and homicide done by necessity; homicide done by justice is, when a man is justly condemned for his offence; homicide willingly done is, either murder, or at least manslaughter; homicide done by chance is, by some accident, or by casting of a stone, or shooting of an arrow, or some other like thing, and killeth against the will of him that casteth or shooteth; and homicide of necessity is, where a man cannot chuse, but he must either kill or be killed, and that will be taken to be in his own defence.

Concerning

Concerning homicide, and first of self-killing, or *felo de se*.

Having gone through the pleas of the crown touching high treason, misprision of treason and petit treason, the order that I have here purposed, leads me to consider of felony, &c. and those are of two kinds; felonies by the common law, and felonies made such by act of parliament.

Felonies by the common law are such, as either concern the taking away of goods, or concern the habitation, or concern the obstruction of the execution of justice in criminal and capital causes, as escapes, rescues, &c. In the first place therefore come to be considered those felonies or offences that relate to life, or the taking away thereof without due process of law; and this again is either that which concerns the loss of life happening to a man's self, or happening to another. *Hale's P. C. 2 pt. 411.*

Felo de se, or suicide, is, where a man of the age of discretion and *compos mentis* voluntarily kills himself by stabbing, poisoning, or any other way.

No man hath the absolute interest in himself; but first God Almighty hath an interest and property in him, and therefore self-murder is a sin against God; 2dly, the king hath an interest in him, and therefore the inquisition in case of self-murder is, *felonice & voluntarie seipsum interfecit & murdravit contra pacem domini regis.*

A man

A man and a woman, as to capital offences, is of the age of discretion at fourteen years old. See **Rape**.

Touching the forfeiture of felo de se.

Felo de se doth not forfeit his lands, nor his wife's dower.

But he doth forfeit his goods and chattels.

Coroners are of three kinds; viz. first, *virtute officii*; 2dly, *virtute chartæ sive commissionis*; 3dly, *virtute electionis*, as the coroners of counties.

The coroner *virtute officii* is the chief justice of the king's bench, who by virtue of his office is the chief coroner of *England*. 4 Rep. 57. *The case of the commonalty of sadlers.*

Coroners by charter or commission or privilege, and those ordinarily were made by grant or commission without election; thus the lord mayor of *London* is by charter coroner of *London*; the bishop of *Ely* hath power by charter of *H. 7.* Queen *Catherine* had the hundred of *Calbridge* granted to her by the 35th of *H. 8.* with power to nominate coroners. 9 Co. Rep. *Hale's P. C.* 2 pt. 53.

And therefore the stat. 28 *Ed. 3. c. 6.* where power of electing coroners is confirmed to the counties; yet there is a saving to the king and other lords, so that the king may grant coroners within certain precincts, and lords of franchises that have power to nominate coroners by charter, may still nominate coroners without election.

There

There have been two great precincts, that by the king's grant have power of granting or having coroners, namely the jurisdiction of the admiralty, and the verge. *Strange's Rep.* title *Admiralty*.

But of deaths of men happening upon the arm of the sea, below the bridge, within the bodies of counties, as upon the *Thames* or *Severn*, &c. in ships there hovering, though the coroner of the admiralty hath jurisdiction, yet it is not exclusive of the jurisdiction of the county, who may inquire in any great river upon these articles, where a man can see from one side to the other; 8 *Ed.* 2. *Hale's P. C.* 399. only the inquisition taken before the coroner of the admiralty are before the commissioners upon stat. 28 *H.* 8. c. 15. The inquisition taken before the coroner of the county is to be returned before the commissioners of gaol-delivery for the county. The other great jurisdiction is the coroner of the king's house, usually called the verge; who, it seems, anciently was appointed by the king's letters patents; but by the stat. 33 *H.* 8. c. 12. the granting thereof is settled in perpetuity in the lord steward, or lord great master of the king's house for the time being.

Anciently the coroner of the verge had power to do all things within the verge, exclusive of the coroner of the county.

But because the king's court was moveable often, by the statute of *Articuli super chartas*, c. 3. it is ordained, that of the death of a man the coroner of the county shall join in the inquisition to be taken thereof with the
coroner

coroner of the king's household; and if it happens it cannot be determined before the steward, process and proceedings shall be thereupon had at common law.

But yet in that case of death within the verge, the coroner of the county cannot take an inquisition without the coroner of the verge, and if he doth, it is void: but if one person be coroner of the county, and also of the verge, the inquisition before him is as good as if the offices had been in several persons, and taken by both.

And though the court remove, yet he may proceed upon the inquisition as coroner of the county. *Wigg's case*, 4 *Co. Rep.* 45, 46.

But if murder or manslaughter be done within the precincts of the king's palace, limited by the stat. 33 *Hen. 8. c. 12.* then by that statute the inquisition shall be taken by the coroner of the household without the adjoining or assisting of any coroner of any county, by twelve or more of the yeomen, officers of the king's household; and this is enacted to be as sufficient, as if taken also by the coroner of the county. *Hale's P. C.* 2 *pt.* 55.

The general coroners of counties are eligible by the county in the county court, by the king's writ *de coronatore eligendo*, and sworn by the sheriff for the due execution of their office. *Fitzh. N. B.* 163. 28 *Ed.* 3. *c.* 6.

Coroner punished for ill practices.

The king against Wakefield.

THE defendant was coroner of *Litchfield*, How punish-
 and as such took an inquisition *super* able.
visum corporis of a man that hanged himself,
 whereby he was found *felo de se*; it fully ap-
 peared to the jury, that the man was luna-
 tick; but the defendant, in order to cover
 the goods, told them that the finding him
felo de se was only matter of course, with
 which they were contented, and found ac-
 cordingly: coming afterwards to be better
 informed what the consequence would be,
 they applied to the coroner, and told him,
 they were fully satisfied the man was a lu-
 natick, and desired he would take the verdict
 so; and thereupon he drew up the inquisi-
 tion, and they all set their hands and seals to
 it. A *certiorari* being brought, he returned
 up the first inquisition, that he might still
 cover the goods, and the court stayed the
 filing it, and committed him. 2 *Sid.* 90,
 101, 144. *Mich.* 1 *Geo.* B. R. 1 *Str.* Rep.
 69.

Cottage.

WHAT a cottage is within the statute
 of 31 *Eliz.* c. 7.

The

The king against Puttle.

THE defendant, being owner of several houses in *St. Catherine's*, let the rooms out to several families, and for this was indicted on the statute about inmates; but the chief justice ruled it not a case within the statute, for the house was not a cottage; all the new buildings about town would be liable to the same prosecution, there not being four acres laid into any of them: and he held further, that the proviso in the statute for market towns would take in this case; for in this respect, as far as the houses are contiguous, *Wapping* is part of the town. 1 *Stra. Rep.* 405.

None to erect a cottage without laying four acres of freehold land to it, or near it, on the forfeiture of 10 *l.* to the king, and 40 *s.* a month for continuing it. Owner or occupier of a cottage, suffering any more families than one to dwell therein, forfeits 10 *s.* a month to the lord of the leet, and the steward shall inquire by presentment by the oath of jurors, and may levy the forfeiture by distress; justices at the quarter-sessions may also hear and determine offences against this statute, but not to extend to cottages in cities, or for labourers in mines, sea-faring persons within a mile of the sea or navigable rivers, or keepers of warrens, shepherds or herdsmen, or to cottages decreed for habitation by the order of justices of assize or sessions.

sessions. *Stat. 31 Eliz.* Churchwardens, by leave of the lord of the manor, may erect cottages on the waste at the charge of the parish. *Stat. 43 Eliz.*

The lord's consent to the erecting of a cottage.

UPON the petition of *A. B.* and the certificate of the inhabitants of the parish of *B.* in the county of *B.* I do hereby give my consent, being lord of the manor of *B.* aforesaid, that the said *A. B.* shall and may erect and set up a cottage for his habitation in some convenient place on the waste within the parish aforesaid, to be assigned by my steward, provided that order of sessions be procured according to law for confirmation thereof.

Witness my hand and seal, &c.

A petition to the justices of the peace in the quarter-sessions for erecting of a cottage.

To the worshipful the justices of the peace at the general quarter-sessions of the peace to be holden in and for the county of B. on Monday the 5th day of next.

The humble petition of A. B. of B. in the county aforesaid, labourer,

Sheweth,

THAT whereas your petitioner, being with his wife and children settled as an inhabitant

Cottage.

inhabitant of and in the said parish of *B.* and at present destitute of an habitation, hath by address made to *W. B.* esquire, lord of the manor aforesaid, obtained by his consent under his hand and seal, for your petitioner to erect and set up a cottage on the waste within the parish of *B.* aforesaid, for an habitation for himself and his family, if an order of sessions could be obtained for confirmation thereof, as by the paper hereto annexed doth appear.

May you therefore be pleased to grant unto your petitioner the order of the court, whereby your said petitioner may be enabled to set up a cottage for an habitation for himself and his family, on some convenient place on the waste within the manor of *B.* aforesaid, to be assigned by the said *W. B.* or his steward.

And your petitioner shall ever pray, &c.

Distresses

Distresses made by Warrants from justices of the peace.

IN all cases where justices of the peace are required or impowered to issue warrants of distress for levying any penalty, or any money directed to be paid in consequence of any acts of parliament, they shall limit a time (not less than four, nor more than eight days) in such warrants for the sale of such distress, unless such penalty or sum, together with the reasonable charges of taking and keeping such distress, be sooner paid.

Distresses by justices for any penalty, to limit a time for payment.

The officer making the distress may deduct the charges of taking, keeping and selling the same, out of the money arising by such sale; the overplus, if any, after such charge, and the penalty or sum of money are paid, is to be returned on demand to the owner; and the officer, if required, is to shew the warrant to the person whose goods are distrained, and to suffer a copy thereof to be taken.

The officer to deduct the charges of such distress.

The provisions and directions relating to distresses for payment of tithes and church rates in the acts of the 7th and 8th of *W. 3.* intituled, An act for the solemn affirmation and declaration of quakers, shall be accepted instead of an oath, are not altered or repealed by this act of 27 *G. 2.*

Distresses for rent.

A Distress is a thing which is taken and distrained upon land for rent behind or other duty; and a man may distrain for rent reserved upon a gift in fact, lease for life or years, &c. although there be no clause of distress in the deed or lease, so as the reversion be in himself; but it is otherwise in a feoffment in fee. *Litt.* 72. *1 Inst.* 57, 205.

Distresses taken for rent must be of goods or things valuable, whereof somebody hath property, and ought to be made of such things whereof the sheriff may make replevin; a horse with a rider on it, or any thing one carries about him, neither shall any thing fixed to the freehold, as a furnace, &c. be distrained. *1 Inst.* 47. *Ventr.* 36.

How and
when to be
made.

All distresses are to be reasonable by our ancient statutes, and distresses must not be taken in the night.

By the statute of the 4th of G. 2. in case any tenant or tenants, or persons getting possession by collusion with such tenant, &c. shall wilfully hold any lands, &c. after the determination of their term, and after demand made, and notice in writing given by the landlord, or lessors or agents, that such person shall, for the time he holds over, pay to the persons kept out of possession, their executors, &c. double the yearly value of the lands, &c. to be recovered by action of debt, whereto the defendant must put in special bail, against which there shall be no relief in equity.

When

When one half year is in arrear, the landlord may enter, serving a declaration in ejectment: see the act. Nothing in the above act to extend to *Scotland*.

The justices of the peace had not any power in favour of the landlord against the tenant, before the 11th of G. 2. which gives the landlord a better remedy in many respects than he had before.

Goods or chattels distrained for rent, not replevied in five days, may be appraised and sold by the person distraining with the undersheriff, constable, &c. to satisfy the debt, leaving the overplus with the sheriff, &c. for the owner's use. Sheaves of corn, hay in the barn, rick, &c. liable to distress; for rescous of goods distrained, and pound breaches, treble damages; and where distress is taken, and no rent due, double the value of the goods to be recovered, and full costs of suit. *Stat. 2 W. & M. c. 5.*

Stat. 8 Ann. distresses may be taken for rent in arrear, where leases are expired, provided it be made in six months, and the tenant in possession. *Stat. 8 Ann. c. 17.* Except goods sold before the seizure for a valuable consideration.

Stat. 11 G. 2. tenants of lands, &c. fraudulently carrying away their goods to prevent distress for rent, landlord may, within thirty days after, make distress wherever he can find such goods, as if on the premises; and such tenants, and others assisting in the fraud, shall forfeit double the value of such goods, recoverable by action of debt, &c. and where such goods do not exceed 50*l.* two justices

of the peace are to inquire, and order the offender to pay it, or commit him to the house of correction for six months.

Landlords to seize goods concealed in an house, on oath made before a justice of reasonable suspicion that the goods are therein, and may break open the same to distrain.

And any cattle feeding on commons, or corn growing on the land, may be taken as a distress, and when secured, may be disposed of, &c. if the tenant do not before pay the rent and charges. *Stat. 11 G. 2. c. 19.*

If there is an execution against goods or chattels of a tenant for life or years, &c. the plaintiff before removal of goods by the execution shall pay the rent of the land, &c. as shall be then due for the premises, so as there be not above a year due, otherwise they shall not be taken or extended; and if more rent is in arrear, paying a year's rent, the plaintiff may proceed in his execution, and the sheriff or other officer is to levy as well the money so paid for rent, as the execution money. *Stat. 8 Ann. c. 14.*

Where a tenant (who holds a tenement, &c. at a rack rent, or where the rent reserved is full three fourths of the annual value of the demised premises) is in arrear for one year's rent, and deserts the demised premises, and leaves the same uncultivated, so as no sufficient distress can be had to counter-vail the arrears of rent, two or more justices (having no interest in the demised premises) at the request of the landlord, his bailiff or receiver, may go upon and view the same, and cause to be affixed on the most notorious

part of the premises notice in writing what day (at least fourteen days distance) they will return to take a second view thereof; and if upon the second view the tenant, or some person on his behalf, do not appear and pay the rent in arrear, or there be no sufficient distress upon the premises, then the justices may put the landlord, &c. into possession, and the lease to the tenant shall be thenceforth void as to the demise; the next judge or judges of assize may in a summary way examine into such proceedings of the justices of the peace, or in *London* or *Middlesex* the judges of the king's bench or common pleas, and in the counties palatine the judges there, and in *Wales* the grand sessions; and they may order restitution to the tenant, and his expences and costs, if they see cause; and if they affirm the act of the justices, they may award costs not exceeding 5*l.* for the frivolous appeal. *Stat. 11 G. 2.*

In case the tenant give notice to quit the premises, and yet refuse to deliver possession at the time in such notice, then such tenants, their executors, &c. shall from thenceforth pay double the rent which should otherwise have been paid, to be recovered as the single rent is in manner aforesaid.

If any irregularity be committed by the parties distraining or their agents, the distress shall not be unlawful, nor the parties deemed trespassers, and the party aggrieved shall only recover the special damage in an action of trespass, &c. If the plaintiff recover, to have full costs; no tenant to recover, if tender of amends hath been made before action brought.

Distresses for rent.

Sheriff, &c. granting replevins shall take from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained, to be ascertained by the oath of a credible witness, conditioned for prosecuting the suit with effect, and for returning the goods, if so awarded; the sheriff shall assign the bond to the avowant without stamps; and if the bond be forfeited, the avowant, &c. may bring an action, &c. See the statute.

Summons to the tenant upon the statute
11 G. 2.

To A. B. now or late of C. in the county of D. &c.

Middlesex, } **W**HEREAS *R. C.* esquire,
to wit, } hath this day exhibited a
complaint against you the said *A. B.* before
us *T. P.* and *R. G.* esquires, two of his ma-
jesty's justices of the peace for the county of
Middlesex aforesaid, residing near the place
whence the goods and chattels herein after
mentioned were removed, and not being in-
terested in the tenement whence the said
goods and chattels were removed, and the
said *R. C.* in and by his said complaint hath
set forth, that you *A. B.* being on the 26th
day of *March* last past tenant to the said *R. C.*
for a term of years not then nor yet expired
of a tenement known by the name of *C.*
aforesaid, upon the demise whereof a rent of
15*l.* by the year was and is reserved due
and

Distresses for rent.

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and payable to the said *R. C.* his heirs and assigns, and that 22*l.* 10*s.* being due to the said *R. C.* and in arrear for the rent of the said demised premisses for one year and half, ending on the 26th day of *March* last past, that you the said *A. B.* on the 26th day aforesaid, fraudulently and clandestinely conveyed away and carried off from the demised premisses your goods and chattels, consisting of beds, linen, brass, pewter, and other household goods, to the value of 40*l.* to prevent the said *R. C.* from distraining the same for the arrears of rent so due to him as aforesaid, whereby (as he alledgeth) you have forfeited and ought to pay to him double the value of the said goods and chattels; which he the said *R. C.* prays may be adjudged by us the said justices accordingly: now we do hereby summon and require you to appear before us at the house of *L. M.* known by the sign of the *C. of D.* aforesaid, on *Friday* next, being the day of this instant, &c. at eleven of the clock before noon, to answer and make your defence to the said complaint, and to the several matters under our cognizance relating thereunto, by force of the late statute in such case made and provided. Given under our hands and seals this 10th day of *A.*

1753.

T. P.

R. G.

The

Distresses for rent.

*The adjudication against the tenant upon
the complaint.*

Middlesex, } **W**HEREAS R. C. of, &c.
to wit, } in the county of, &c.
esquire, did on the day of A. instant ex-
hibit a complaint in writing before us T. P.
and R. G. esquires, two of his majesty's ju-
stices of the peace for the county of, &c.
aforesaid, residing near the place whence the
goods and chattels herein after mentioned
were removed, as herein after mentioned,
and not being interested in the tenement
whence the said goods and chattels were so
removed, against A. B. now or late of, &c.
aforesaid, victualler, and in and by his said
complaint did set forth, that the said A. B.
being on the day of, &c. last past tenant
to the said R. C. for a term of years not
then nor yet expired (*or since expired, or
otherwise, as the case is*) of a tenement known
by the name of, &c. aforesaid, upon the de-
mise of, &c. (*or holding, if there be no de-
mise*) whereof a rent of, &c. by the year
was and is reserved due and payable to the
said R. C. his heirs and assigns (*or his execu-
tors, administrators and assigns, as the case
shall be*) and that, &c. being then due to the
said R. C. and in arrear for the rent of the
said demised (*or if there be no demise*) for
the rent of the premises so holden, for one
year and half, ending on the day of March
last past; he the said A. B. on the day
aforesaid,

aforesaid, fraudulently and clandestinely conveyed away and carried off from the said premisses (or from the premisses so holden) his goods and chattels, consisting of beds, linen, brass, pewter, and other household goods, to the value of 44*l.* to prevent the said *R. C.* from distraining the same for the arrears of rent so due to him as aforesaid, whereby (as the said *R. C.* alledged) the said *A. B.* hath forfeited, and ought to pay to the said *R. C.* double the value of the said goods and chattels which he the said *R. C.* prayed might be adjudged by us the said justices accordingly: and whereas we the said justices did duly issue our summons to the said *A. B.* containing full notice of the said complaint, and thereby requiring him to appear before us at this time and place, to wit, this day of, *Éc.* 1753, at the house of, *Éc.* known by, *Éc.* at *C.* aforesaid; at which last mentioned day and place the said *A. B.* the defendant appeared, and saith, that he is not guilty of the offence aforesaid; whereupon, and upon examination of the fact, and of all proper witnesses upon oath, it is now fully proved, and we do hereby adjudge, that the matter of the said complaint is true in manner and form as is before recited, and more particularly that the said *A. B.* being tenant of the said demised premisses as aforesaid, is guilty of fraudulently and clandestinely removing from off the demised premisses aforesaid on the day of, *Éc.* last past, at, *Éc.* aforesaid, the several goods and chattels following; that is to say, three dozen of pewter plates of the value of, *Éc.* which respective
values

Distresses for rent.

values of the said goods and chattels in the whole amount to the sum of, £*c.* and that he the said *A. B.* so removed the said goods and chattels to prevent his landlord the said *R. C.* esquire, from distraining for, £*c.* pounds then due and in arrear to the said *R. C.* for rent of the said demised premisses for one year and half, ending on the day of, £*c.* last past: and it is further here now considered and adjudged by us the said justices, that the said *A. B.* hath for his said offence forfeited, to be paid to his said landlord the said *R. C.* esquire, the sum of 80*l.* being double the value of the said goods and chattels so removed as aforesaid; and we do hereby order and adjudge, that the said *A. B.* do pay to the said *R. C.* esquire, the said sum of 80*l.* on the day of, £*c.* next ensuing the date hereof. Given under our hands and seals at, £*c.* aforesaid this 14th day of, £*c.* in the year of our Lord 1753.

T. P.
R. G.

A notice to be affixed pursuant to the statute of 11 G. 2.

By T. P. and R. G. esquires, two of his majesty's justices of the peace for the county of M.

Middlesex, **W**HEREAS *R. C.* of, £*c.* in the county of *M.* aforesaid, esquire, hath this day complained to us *T. P.* and *R. G.* esquires, two of his majesty's justices

Justices of the peace for the county of *M.* aforesaid, that you *A. B.* being his tenant, holding the tenement in *C.* aforesaid, known by the, &c. at a rack rent, that is to say, at the rent of, &c. pounds by the year, and you being in arrear in the sum of, &c. for rent of the premises for one year and half, ending at *Michaelmas* last, did on the 30th day of *September* last desert the premises, and leave the same unoccupied, so as no sufficient distress can be had to countervail the arrears of rent : and whereas we the said justices, at the request of the said *R. C.* have this day gone to the tenement and viewed the same, but could not enter into and upon the same, the door thereof being shut and fast locked, or otherwise secured ; now we do hereby give notice to you *A. B.* that on *Wednesday* the 31st day of this instant *October*, we will return to take a second view thereof ; and if upon such second view you the said *A. B.* or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distresses upon the premises, that then we shall put the said *R. C.* esquire, in possession of the premises, and the lease thereof to you the said *A. B.* as to any demise therein contained only, will become void. Given under our hands this day of, &c.

1753.

T. P.

R. G.

To *A. B.* &c.

There must be at least fourteen days notice.
Stat. 11 G. 2.

For

For one rent there cannot be two distresses.

For one rent there cannot be two distresses, if there were sufficient goods when the first was made; but if there be not then enough for a distress, it may be taken afterwards, or a distress may be for part of the rent, and an action of debt for the rest thereof; but if the owner of the goods tender his rent, and a distress is afterwards taken, it is wrongful; and if any person shall distrain another on purpose to injure him, he shall pay treble damages: if where no rent is due, and distress and sale be made, the owner of the goods distrained may recover double the value and costs. 1 *Inst.* 160. 2 *Lev.* 808. *Rep.* 147. 2 *Inst.* 107. *Stat.* 2 *W. & M.*

Where a distress shall be taken, and not replevied, goods to be appraised and sold.

Where goods and chattels shall be taken as a distress for rent, if the tenant and owner thereof shall not, within five days after such distress taken and notice thereof, with the cause of taking left at the mansion-house, or other most notorious place on the premises charged with the rent distrained, replevy the same, with sufficient security to be given to the sheriff, then the landlord or person distraining, with the sheriff, constable, &c. may cause the goods and chattels to be appraised by two sworn appraisers, whom such sheriff or constable are to swear to appraise the same truly, and after such appraisement may lawfully sell the goods towards satisfaction of the rent and charges, leaving the overplus, if any be, in the hands of the sheriff or constable for the owner's use. *Stat.* 2 *W. & M.*

If notice be not given in writing on taking a distress, of things distrained, and for what you distrain them, they may not be sold by the

the stat. 2 *W. & M.* but the distress is to be detained till replevin or satisfaction; here the sheriff ought to take two sorts of pledges, one by the common law to prosecute, and the other by the statute to return the distress, if the taking be adjudged lawful; and if the sheriff deliver a distress without these pledges, he must answer the price thereof. 1 *Inst.* 145. *Fitzb. N. B.* 69.

The form of a landlord's warrant to distress for rent.

KNOW all men by these presents, that I The warrant *R. C.* of, *Essex*. do hereby authorize and to distress. appoint *A. B.* of, *Essex*. to take any person or persons to his assistance, and enter into the house of *C. D.* in, *Essex*. and there make a distress of all such goods and chattels as are in and upon the premises, for 10 *l.* for half a year's rent due to me the said *R. C.* at, *Essex*. last, and after the said goods are so distrained, if the said *C. D.* doth not, within the time limited by the act of parliament for that purpose made, replevy the same, or pay the said rent, then and in such case I do hereby authorize you the said *A. B.* to cause the said goods so distrained to be appraised, and according to such appraisement to make sale thereof to any person or persons as will buy the same, and to dispose of the money arising by the sale in such manner, as by the said act is directed, and for your so doing, this shall be your sufficient warrant. Witness my

my hand and seal this day of *October*
1753.

R. C.

*The form of an appraiser's oath for goods
distrained.*

The apprai-
ser's oath.

YOU shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and understanding; you shall not, through partiality, interest or otherwise, over or under estimate the said goods, but impartially do your duty herein.

So help you God.

The appraisers valuing the goods too high, shall be obliged to take them at the price appraised. *Stat. 13 Ed. 1.*

*The form of the inventory and appraise-
ment.*

AN inventory of the goods seized and distrained by *T. P.* of, &c. in the house of *C. D.* of, &c. for 10*l.* for one half year's rent due to *R. C.* at *Michaelmas* last, by authority of the said *R. C.* taken the day of, &c. in the year of, &c. for the rent afore-said.

Imprimis,

Distresses for rent.

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Value, &c.

Imprimis, In the fore parlour, a }
round mahogany table, a pier }
looking-glass, and six beech }
matted chairs, }

In the chamber one pair of stairs, }
a red china bed, &c. }

In the kitchen, &c. _____

And so go on with the rest of
the rooms in the house. _____

Valued in all at _____

By us, witness our hands this day of,
&c. 1753,

R. F. }
G. H. } sworn appraisers.

J. K. constable.

*The form of notice of the distress to the
tenant.*

Mr. C. D.

THIS is to inform you that I have, by
the authority of your landlord R. C.
esquire, this day of, &c. seized upon
your goods in your house in, &c. for 10 l.
for half a year's rent due to the said R. C. at,
&c. last past, and have taken an inventory
thereof, and locked up the same in your
chamber one pair of stairs, &c. (*or where
else the same are deposited*) and if you do not
pay the said rent due, or replevy the goods
mentioned in the inventory, I shall in five
K days

Distresses for rent.

days make sale thereof according to the direction of the statute; of which take notice. From, &c.

Your's

T. P.

Witness, that a copy hereof
was this day delivered to
Mrs. M. D. wife of the
said C. D. by

G. H.

But this rule of distresses doth only hold for rent in arrear, amerciaments in court leets, but not for amerciaments in court barons; nor doth it extend to cases where a distress is given in the nature of an execution by any particular statute, as for the poors rate, and the like. *Dr. & Stud.* 151. 3 *Salk.* 136.

The landlord must remove the goods at the five days end, or he is a trespasser. *Ld. Raym.* 1424. See *Stat.* 11 G. 2. c. 19. 2 *Stra. Rep.* 717.

Instruments of a man's trade or profession may not be distrained, as the books of a scholar, ax of a carpenter, &c.

But this is to be understood, when other things may be taken as a distress. 1 *Inst.* 47.

Implements of trade may be distrained, if no other goods can be taken; for they are only pledged when no other goods may be taken; for spare implements of trade, or *cazalla otiosa*, for which the owner hath no present use, are distrainable. *Caribew* 358. 2 *Strange* above.

Drovers.

Drovers.

An information against a drover for driving his cattle on a Sunday.

Middlesex, } **T**HE information of E. G. of
to wit, } the parish of *St. Mary, Is-*
lington, in the said county, a credible witness,
taken upon oath before me, one of his ma-
jesty's justices of the peace for the said coun-
ty, this 9th day of *November 1751*.

This informant on his oath saith, that R. S.
of the parish of *St. Mary, Islington*, in the said
county of *Middlesex*, did on the 27th day of
October last, being the Lord's day, com-
monly called *Sunday*, at the time and in the
parish aforesaid, exercise his particular worldly
labour, business, or work of his ordinary call-
ing of a drover, contrary to a statute made
in the 29th year of the reign of his majesty
king *Charles the second*, intituled, *An act for*
the better observation of the Lord's day, com-
monly called Sunday.

The mark of
E. † G.

Sworn the day and
year abovesaid,
before me

R. C.

The summons upon the information.

To Mr. R. S.

WHEREAS information upon oath hath this day been made before me, one of his majesty's justices of the peace for the county of *Middlesex*, by a credible witness, that you the said *R. S.* did on the 27th day of *October* instant, being the Lord's day, commonly called *Sunday*, in the parish of *Islington* in the county of *Middlesex*, use and exercise your work and business of a drover, against the statute in such case made and provided: these are therefore in his majesty's name to require you to appear before me at my house in *Islington* in the said county of *Middlesex*, on next at ten of the clock in the morning, to shew cause why the sum of 20*s.* should not be levied on your goods and chattels for the offence aforesaid: hereof fail not at your peril. Given under my hand and seal this day of *October* 1751.

R. C.

Stat. 3 Car. 1. c. 1. view, confession, or two witnesses; prosecution in six months; forfeits 20*s.* to be levied by distress, &c. or in default to sit in the stocks three hours.

Stat. 29 Car. 2. by one witness; stocks wo hours.

Another

Another information against several drovers.

Middlesex, } THE information of *R. H.* of
to wit, } the parish of *L.* in the county
of *Middlesex*, yeoman, a credible person, taken upon oath this 24th day of *February* 1752, before me, one of his majesty's justices of the peace for the said county,

Says upon his oath, that the several persons hereunder named did respectively exercise and use their respective callings and worldly labour on the 23d instant, being *Sunday*, of droving, contrary to the statute, in the parish of *H.* in the county of *Middlesex*, viz. *W. B. R. B. T. K. and A. B.*

R. H.

Sworn the day and
year abovesaid,
before me

R. C.

The several summonses, as to the form, must be as aforesaid; and the justice's conviction must be on the back of the summons, as thus:

October 8, 1751.

THE within named *J. B.* was this day duly convicted of the offence within mentioned, and paid the penalty, being 20s. before me.

R. C.

But if such persons appear upon the summons, and refuse to pay the above penalty, then a warrant of distress must issue, to levy the penalty of 20 s. by sale of the goods of such person; and if it appear by the return of such warrant, that there is no sufficient distress, then ought the justice to record that he hath no sufficient distress; then ought the justice to issue his warrant, that the person shall be committed to the stocks for the space of two hours.

Stat. 29 Car. 2. says, that for want of distress, to sit in the stocks two hours.

One third of such penalty to be allowed to the informer, the rest to the poor of the parish where such offence was committed.

Dead. See Coroner.

Demurrer. See Indictment.

Evidence.

IN what cases infants of tender years may be examined as witnesses. See **Felony**, p. 145.

Extortion. See Indictment.

Excise.

Excise.

BY the statute of 12 *Car.* 2. it is enacted, that all forfeitures and offences which shall be made or committed within the limits of the chief office of excise in *London*, shall be heard and determined by the chief commissioners, &c. and that all forfeitures and offences against the said act, &c. within other counties, cities, towns or places within the kingdom of *England* or dominions thereof, shall be heard and determined by any two or more justices of the peace residing near to the place where such forfeitures shall be made, or offences committed, &c.

Offences within the limits of the chief office of *London*, to be determined there.

In other counties by the justices of the peace.

All other acts refer to the 12 *Car.* 2. for recovering penalties.

Forfeitures and offences against the excise laws must be heard in the proper county.

Informations must be laid within three months next after such offence shall be committed. *Stat.* 12 & 13 *W.* 3.

And such three months must be lunar months of four weeks to the month, and no more, according to which computation eighty-four days make up three months; and therefore if informations of this kind are not laid before justices of the peace within such eighty-four days next after the committing the offence, they then come too late.

Complaints made at the chief office of excise, to be heard by three or more commissioners, and seizures of brandy, &c. out of

the limits of the office of excise in *London*, may be determined by two justices of the peace. *Stat. 1 G. 2. c. 21.*

Warrant against a tanner for not paying the duty on hides to levy the forfeiture.

To the constables of B. in the said county.

Middlesex, } **W**HEREAS *A. B.* of, &c.
to wit, } in the county aforesaid,
gentleman, officer of the excise for the duty on leather, hath this day given information upon oath before us, two of his majesty's justices of the peace for the county aforesaid; that *C. D.* of *B.* aforesaid, tanner, hath refused and neglected to pay the sum of 20*s.* with which he is justly charged, for the duty on tanned leather: these are therefore in his majesty's name to require and authorize you to levy the sum of 40*s.* which he hath forfeited for the said offence, by distress and sale of the goods and chattels of the said *C. D.* Hereof fail not. Given under our hands and seals this day of *S.* 1754.

Stat. 1 Jac. 1. c. 22. 9 Ann. c. 11.

Execution.

Execution.

WHERE a person hath been at large after his attainder, and afterwards is brought into court, and demanded why execution should not be awarded against him, if he deny that he is the same person, it shall be immediately tried by a jury returned for that purpose. *2 Hawk. 463.*

The court may command execution to be done without any writ. *Ibid.*

If a man condemned to be hanged come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. *Ibid.*

Fairs and markets.

OWNERS of fairs or markets to appoint toll-keepers or book-keepers, on pain of 40s. and they to give an account of horses sold, &c. under the like penalty. *Stat. 2 & 3 P. & M.*

Sellers of horses to procure vouchers of the sale of a horse to them, and for every false voucher shall forfeit 5*l*. The names of the buyer, seller and voucher, and the price of the horse, to be entered in the toll-taker's book, and a note thereof delivered to the buyer:

2

a horse

a horse stolen may be redeemed by the owner in six months, repaying the buyer, &c. *Stat. 31 Eliz. c. 12.*

Fairs kept longer than they ought, to be seized into the king's hands, and proclamation to be made how long fairs are to continue. *Stat. 2 Ed. 3. c. 15.*

If a man buys cattle in a fair or market, which are stolen, and selleth them out of the market, though the beasts are afterwards brought into the market, and the second bargain is confirmed by the person which bought the cattle, who pays all his money, and likewise the toll for the beasts, the property is not thereby changed, for the bargain shall have relation to the beginning, which was unlawful. *Dyer 99.*

Felony.

How felonies are to be comprehended and distinguished.

IN all crimes there must be an evil intention, a mere mistake is not punishable, nor is an evil intention punishable equally with the fact, except in treason. *4 Rep. 16.*

When one who has the use of his reason, and is at liberty, his endeavour to commit felony, as to rob, &c. is punishable, though not to that degree as if the felony and robbery, &c. had been actually committed; for in such case the will shall not be taken for the deed. *3 Inst. 5, 69, 161. 4 Rep. 16.*

The

The above law is in some measure altered by the stat. 7 G. 2. which says, that persons convicted of assaulting others, or by menaces or forcible manner demand money, goods, &c. with a felonious intent to rob, shall be transported.

Now as to felonies I shall comprehend under larceny and petit larceny, and proceed to distinguish them as follows :

It appeareth by our law books, and by the statute of *Westminster*, that there is grand larceny and petit larceny, distinguished so by the value ; for if the personal goods stolen amount to above the value of 12 *d.* then it is grand larceny, and if it be under, then it is petit larceny, for which the offender shall forfeit all his goods and suffer some corporal punishment, as whipping, &c. and this was the ancient law before the conquest. 3 *Inst.* 108.

But first it must appear to be felonious, *cum animo furandi*, and this intent to steal must be, when it cometh to his hands and possession ; for if he hath the possession of it once lawfully, though he hath *animum furandi* afterwards, and carrieth it away, it is no larceny. *Ibid.* 107.

If one finds goods as I have lost, and converts them to his own use *animo furandi* ; as if one finds treasure trove, waif or stray, is no felony, therefore it must follow, that one who has the actual possession of my goods by my delivery for a special purpose, as a carrier who receives them in order to carry them to a certain place, or a taylor who has them in order to make me a suit of cloaths,
or

or a friend who is intrusted with them to keep for my use, cannot be said to steal them. 3 *Inst.* 103, 108.

But if a carrier, after he has brought the goods to the place appointed, take away the goods again secretly *animo furandi*, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger. *Ibid.* 107.

And it seems generally agreed, that one who has the bare charge or special use of goods, but not the possession of them, as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps a key to my chamber, or a guest who has a piece of plate set before him in an inn, may be guilty of felony in fraudulently taking away the same; for in all these cases the offence may as properly come under the word *cepit*, the injury to the owner being as great, and the fraud as secret, and the villany more base, than if it had been done by a stranger. *Moor* 247, 248.

And I must further observe, that there is one general implied exception in all felonies, that if one be ready to starve, take victuals from another to satisfy his present hunger, it ought not to be adjudged felony. *Dalton* 151, 263.

My lord *Coke*, in his 3 *Inst.* distinguishes larceny, as taking from another, which does not put him in fear, and is either done privily without his knowledge, as by picking his pocket, or by cutting his pocket and picking

picking the purse, and stealing from thence to the value of 12*d.* If it be laid in the indictment, to be done *clam & secrete a persona*, pursuant to the 8th of *Eliz.* the offender is excluded his clergy.

A private larceny from the person shall have the benefit of the clergy, openly with his knowledge, in his sight and before his face, as if one takes off my hat and wig, &c. from my head, and runs away with it, or comes into a shop or cheapens goods, and runs away with them without paying for them, &c. in all these cases of open larceny with knowledge, the offenders are by the common law within the benefit of the clergy.

3 *Inst.* 68.

The statute of the 8th of *Eliz.* abovementioned says, none that taketh away any thing privily or feloniously from the person of another, shall have the benefit of his clergy, which words are to be understood (thus) taking any thing (generally) from the person of another privily and feloniously; yet by the construction of that statute the thing taken must be above the value of 12*d.* and the jury may find the value under 12*d.* if they think proper, and then he is within the benefit of the clergy; the statute not altering the offence, but taking away the privilege of the clergy, if above the value, which the offender had before the statute; therefore if under 12*d.* it is petit larceny at common law. *Poult. c.* 153.

If any person shall take with an intent to steal, imbezil or purloin any chattels, bedding or furniture, which by agreement he is
to

to use, or shall be let to him to use in lodgings, such stealing is larceny and felony. *Stat. 3 & 4 W. & M.*

If a servant, being of the age of eighteen years, and not an apprentice, goes away with goods of his master or mistress delivered to him to keep, and converts them to his own use with an intent to steal, to the value of 40s. is felony. *Stat. 21 H. 8. c. 7.*

Felony is always accompanied with an evil intention, and the intention to commit felony is very criminal, for that at common law it was punishable as felony, though it missed its effect.

After one is imprisoned for felony, &c. it is either by the common law or by the statute.

Felony by the common law is against the life of a man, as murder, &c. felonies by the statutes are very numerous.

Felony is distinguished from lighter offences, in that the punishment is death, but not always, for petit larceny is felony, yet not punished with death.

As to felonies in general there are two sorts; one for the first offence is allowed clergy, and another that is not; but clergy is granted where it is not expressly taken away by statute. *Stamf. l. 2.*

By the statute of the 12th of *Anne*, if any person shall steal money or goods to the value of 40s. being in any dwelling-house or out-house, though such house be not broken, loses the benefit of clergy. This act not to extend to apprentices under fifteen years of age, who shall rob their masters. *12 Ann. c. 7.*

At

At the sessions in the *Old Baily, Trinity Term 9 G. 1.* a man was indicted on the statute of *W. 3.* for stealing a shirt out of a shop; which said statute says, that any person who by night or day shall, in any shop, warehouse, coach-house or stable, privately and feloniously steal any goods to the value of 5*s.* or more, though such shop, &c. be not broke open, and the owner, &c. be not in such shop, or shall assist in committing such offence, and be thereof convicted, shall not have the benefit of his clergy.

The case was thus; a shirt, the property of *W. R.* was left in the shop of *R. S.* to be sent to a seamstress to mend, was stolen by the prisoner out of the shop: question was, whether this was a felony within the aforesaid statute, for which the offender could not have his clergy; and the judges were of opinion that it was not; for the statute was made as a remedy for the owners of shops to preserve their own goods by way of trade, but not to extend to goods left there, and consequently the stealing such goods was not felony without the benefit of clergy. *Mod. cases in law and equity* 165.

A reward of 40*l.* is given for apprehending a burglar, robber, &c. 5 *Ann.*

Rape.

THE crime of rape is, where a man hath an unlawful and carnal knowledge of a woman by force and against her will. It is a violent deflowering her, whether she be young or

The crime of rape, what it is.

or old, which offence is felony without benefit of clergy, both by common and statute law.

It is ordained by the 18th of *Eliz.* that whosoever shall carnally know any woman child under ten years of age, shall suffer as a felon; and here it doth not signify whether such child consented or were forced, but it must be proved the offender entered her body.

There must be an actual penetration and emission to make this crime; and if there be neither of these, an attempt to ravish, be it never so outrageous, is deemed only an assault.

In case of a rape committed it is no excuse or mitigation of the offence, that the woman yielded to the violence, and consented either before or after the fact, if her consent was forced.

A woman being a common strumpet, is nevertheless under the protection of the law.

But it is said by some authors to be evidence of a woman's consent, that she was a common whore.

And it is a strong presumption against a woman, that she made no complaint in a reasonable time after the injury, for which our ancient laws mention forty days.

If she conceals the fact for any long time, it may argue a consent.

A woman ravished may prosecute, and is allowed to be a witness in her own case; but a woman's positive oath of a rape, without concurring circumstances of the fact, and signs of the injury, is seldom credited; but if
such

such woman shall conceive a child, then *Britton* taketh it to be no rape, because her conception proveth her consent: aiders and abettors in rape are principals. *Lambard* 259.

What age the law will allow an infant to be a witness in the case, *The king against Trauers*, that a girl, being but seven years of age, could not be a witness; it was insisted, that it had been formerly held that none under twelve years of age could be admitted to be a witness, and said, that a child of six or seven years of age, in point of reason and understanding, ought to be considered as a lunatick or a madman.

What age the law allows an infant to be a witness.

On the other side it was said, that in capital cases which concerned life, this objection might be allowed; but the lord *Raymond* chief justice held, that there was no difference betwixt capital offences and lesser offences in this respect, and that a person who could not be a witness in the one case, could not be in the other: the reason why the law prohibits the evidence of a child so young, is, because it cannot be presumed it should distinguish betwixt right and wrong. No person has ever been admitted as a witness under the age of nine years, and very seldom under ten: at the *Old Baily* in 1704 this point was thoroughly debated in the case of one *Steward*, who was indicted upon two indictments for rapes upon children; the first was a child of ten years and ten months, and yet that child was not admitted as a witness before other evidence was given of strong circumstances as to the guilt of the defendant, and before the child had given a good ac-

L count

count of the nature of an oath; the second indictment against *Steward* was attempted to be maintained by the evidence of a child six or seven years of age; but it was unanimously agreed, that a child so young could not be admitted to be an evidence, was rejected, and it was merely upon the authority of *Hale's P. C.* where it was said, that a child of ten years of age may be a witness, that the child of that age was admitted to be a witness in the first indictment, and in the present case the child was refused to be admitted a witness; and there not being evidence without her, the defendant was acquitted. The defendant was indicted at the assizes at *Kingston* in 1726, before the lord *Raymond*, for a rape on the body of a child then little more than six years old, and because the lord *Raymond* refused to admit the child as an evidence against him, he was acquitted.

At the same assizes an indictment was found against him for an assault with an intent to ravish the said child, and this indictment coming on to be tried before the lord *Raymond* chief justice, the same objection was now taken by serjeant *Comyns* and serjeant *Darnel*. 2 *Strange's Rep.* 700.

A man of sixty years of age was indicted for a rape, which was fully sworn against him, by a young girl of fourteen years old, and the concurrent testimony of her father and mother and some other relations.

When he came to his defence, alledged it was true the fact was sworn, yet it was not possible for him to produce witnesses to the negative; but yet he said his very age carried

fied the greatest presumption, that he could not be guilty of that crime; but yet he had another circumstance more, which he believed would satisfy the court and jury, that he neither was nor could be guilty of that crime, that he had for seven years last past been afflicted with a rupture so hideous and great, that it was impossible that he could carnally know any woman, neither had he on that account carnally known his wife, and offered to shew it openly in court; but the court appointed the jury to withdraw into some room to inspect this unusual evidence, and they accordingly did so, and came back and gave an account, that it was impossible he should have to do with a woman in that kind, much less to commit a rape, for all the bowels seemed to be fallen down into those parts, that they could scarce discern his privities, the rupture being full as big as the crown of a hat; whereupon he was acquitted. *Hale's P. C. 2 pt. fo. 636.*

This part of the statute of *Westm. 2. c. 34.* concerning felony for taking away the wife with the goods of her husband, hath affinity with what goes before in the same statute, concerning rape; and though this learning hath been long antiquated, yet it is of use to be known.

If a wife goes away with her own consent with another man, and takes with her the goods of her husband, this seems not to be felony, neither in the man nor in the wife; though *Dalton, c. 104. p. 266. (a)* takes it to be felony in the man that takes her and the goods, but is a trespass, for which at com-

mon law the husband may have an action of trespass *quare uxorem suam cepit & abduxit cum bonis viri*.

But if *A.* take the wife of *B.* against her will, with the goods of her husband, but doth not actually ravish her, it is felony as to the goods, for which the party may be indicted; but as to the taking away of the wife it is but a trespass, for which the husband may have his action, and shall recover damages for the taking of his wife and goods at common law.

Accusation of a rape easily made, hard to be proved, and harder to be defended by the accused, though never so innocent, with many instances thereof. *Hale's P. C. 2 pt. 635.*

The king against Kimberly.

THE defendant was brought up by *ba-beas corpus*, being committed to *Wood-street* counter for feloniously marrying *Bridget Reading* contrary to an *Irish* act of parliament 6 *Ann.* in order to be transmitted to *Ireland* to be tried, the offence being committed there.

Thereupon the defendant was remanded, and upon application to the secretary of state it was referred to Mr. Attorney General to consider of the manner of sending him over, and upon an attendance by council Mr. Attorney General reported, that he might be taken from the counter by a messenger, who should have a warrant to carry him to *Ireland*, whither he was carried, tried, condemned and executed. *2 Strange's Rep. 848.*

If

If *A.* bring *B.* before a justice of peace on suspicion of felony, if he can testify materially against him, he may bind him over to prosecute; and if he refuse the justice may commit him. *Hale's P.C. 2 pt. 52.*

If a felon steal goods, and leave them in a manor or town, or in his house, or in the house of another, or hide them in the earth, or in any other secret place, and afterwards fly, these goods are not forfeited, nor waif goods in the law, for waif is where a felon in pursuit waveth or leaveth the goods, or for fear to be taken, thinking that pursuit was or is made, having the goods with him in his possession, flieth away and leaveth the goods; in these cases the goods shall be said waved in law; but if he had not the goods with him when he did fly, being pursued, or for fear of being apprehended, the goods are not waved nor forfeited; but the owner may take them again when he will, without any fresh suit; but if the felon in his flying wave them, the goods are forfeited by the common law: if the felon upon fresh suit be not attaint at the suit of the owner of the goods; and the reason that waif is given to the king is for default of the owner, that he doth not make fresh suit after for to apprehend the felon, wherefore the law doth impose the penalty on the owner.

Bona fugitivorum are the proper goods of him that flieth away for felony; but it is to be observed, that if a man fly for felony his goods are not forfeited until they be found by indictment, or otherwise lawfully found

The goods of fugitives, how forfeited.

of record upon his acquittal, that he fled for the felony, they cannot be claimed by prescription, because the things forfeited by matter of record cannot be claimed by prescription: but waif, stray, treasure trove, wreck of the sea, &c. which things may be gained by usage without matter of record, there a man may prescribe to have *bona & catalla felonum*; in some cases *bona & catalla felonum* shall be forfeited by conviction, and sometimes without conviction; but always when any forfeiture is of any goods of felons, it ought to appear of record, and that is the cause that such goods cannot be claimed by prescription.

Deodands are goods which cause the death of a man by misadventure, and are not forfeited till they be found of record, and therefore cannot be claimed by prescription; and the jury that presents or finds the death, ought to find and appraise the deodand; also *omnia quæ movent ad mortem sunt deodanda, bona & catalla in exigendo positorum* are, when any be appealed or indicted of felony, and withdraw or absent himself for so long time as an exigent is awarded against him for his absenting (which is a flying away in law) he shall forfeit his goods and chattels which he had at the time of the exigent, and after be found not guilty. See the stat. 21 H. 8. c. 11. concerning goods waved, and for restitution, &c. 5 Rep. 109.

Foreign

Foreign service.

PERSONS contracting with artificers to go out of the kingdom incur a penalty of 100 l. and three months imprisonment; and the artificers going abroad, and not returning in six months after warning given them by the ambassador, minister or council, are incapable of lands by descent, devise or legacy. *Stat. 5 G. 1. c. 27.*

On complaint on oath before a justice, that any person is endeavouring to seduce an artificer, or is preparing to go out of the kingdom, he may issue his warrant to bring such person before him; and if it shall appear by confession, or oath of one witness, he may bind him over to the next assizes or sessions; and if upon indictment he be convicted, he shall give security not to depart, and be imprisoned until such security be given.

And if any person shall contract or endeavour to persuade any artificer to go into any foreign country not belonging to *Great Britain*, and thereof be convicted within twelve months, shall for every such person forfeit 500 l. and be imprisoned in the common gaol for twelve months, and till payment of the forfeiture; and for a second offence 1000 l. and imprisoned for two years, and until payment.

Seducing artificers into foreign service, the penalty.

If any person shall put on board any tools or utensils, either for woollen or silk manufactory, shall forfeit 200 l.

Forgery.

If any subject of *Great Britain* enlist or enter himself, or any person procure him to list as a soldier, to serve any foreign prince, without leave of his majesty, to be guilty of felony; but such person discovering by whom enlisted, &c. shall be indemnified. *Stat. 9 G. 2. c. 30.*

Forfeiture. See **Felony.**

Forgery.

IF any person forge any exchequer bill or indorsement thereon, or knowingly tender the same in payment, shall suffer as a felon. *Stat. 5 Ann. c. 13.*

The forging of any deed, will or bond, bill of exchange, note, &c. or publishing as true, knowing them to be false, is felony excluded of clergy, but not to make corruption of blood. *Stat. 2 G. 2. c. 25.*

Forging, counterfeiting, or uttering the acceptance of any bill of exchange or sum of accountable receipts for any note, bill, or order for money, &c. with intent to defraud persons, felony without benefit of clergy. *Stat. 7 G. 2. c. 22.*

It is made felony without benefit of the clergy to forge bank notes, exchequer bills or orders, by the several statutes relating to these securities. See *stat. 12 G. 1. c. 32.*

Gaming.

Gaming.

SECURITIES for money won at play to be void; and any person who shall at any time or sitting, by playing at cards, &c. lose to any one person in the whole the sum of 10*l.* and shall pay or deliver the same, or any part thereof, the party so delivering the same, or any part thereof, shall be at liberty within three months then next after to sue for and recover the money so lost, with costs of suit, by action of debt, founded on this act, to be prosecuted in any of his majesty's courts of record, wherein no privilege of parliament to be allowed; in which action it shall be sufficient for the plaintiff to alledge, that the defendant or defendants are indebted to the plaintiff, or received to the plaintiff's use the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this statute, without setting forth the special matter: and in case the person losing such money, or other thing, shall not within the time aforesaid really and *bona fide* sue for the money so lost as aforesaid, it shall and may be lawful to any other person or persons, by any such action, to sue and recover the same, and treble the value thereof, with costs of suit, against such winner or winners as aforesaid; one moiety thereof to the use of the poor of the parish where the offence shall be committed. If the

Money lost by gaming, how to be recovered.

Persons losing at cards, &c. 10*l.* may recover the same.

9 Ann. c. 14.

the person upon oath, who shall by virtue of this act be liable to be sued for the same, shall be obliged to answer upon oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won at play as aforesaid; the person who shall so discover and repay, shall be indemnified from further punishment. *Stat. above.*

Affaults on account of money won at play to forfeit all his goods and chattels and personal estate, and imprisoned for two years, without bail. *Stat. above.*

Any persons winning by fraud, &c. above 10*l.* at one sitting, and convicted thereof upon indictment or information, to forfeit five times the value, and shall be deemed infamous, and suffer corporal punishment, as in cases of wilful perjury. *Stat. 9 Ann. c. 14. s. 2, 3, 4.*

What are unlawful games.

The game of the ace of hearts, faro, basset, hazard, passage, roulette, otherwise roly poly, and all other games invented, or to be invented, with one or more die or dice, or any other instrument, engine or device in the nature of dice, having one or more figures or numbers thereon (backgammon, &c. excepted) are deemed games or lotteries within the meaning of the statutes of 10 & 11 *W. 3. 9 Ann. c. 6. 8 G. 1. c. 2.* Penalty of 200*l.* on such as shall set up, and 50*l.* on such as shall play at any of the said games.

No privilege of parliament to be allowed to any person prosecuted for keeping a gaming-house. *18 G. 2. c. 34.*

Persons

Persons having no visible estates, not making appear that the principal part of their maintenance is got by other means than gaming, to be bound to the good behaviour. Stat. 9 Ann. c. 14.

Persons that use unlawful games, contrary to the 33 H. 8. a justice to commit them, till they find sureties not to play any time henceforth. Stat. 2 G. 2. c. 28.

Justices of the peace and head officers in corporations, to enter houses suspected of unlawful games, and arrest and imprison the gamesters till they give security. Persons keeping gaming-houses forfeit 40 s. gamesters 6 s. 8 d. 33 H. 8. c. 9.

Warrant against a person for unlawfully gaming, having no visible estate.

To all constables and others his majesty's officers of the peace for the said county.

Middlesex, } THESE are in his majesty's Two justices.
to wit, } I name to command you and every of you, upon sight hereof, to take and bring before us, or some other of his majesty's justices of the peace for the said county, the body of *A. B.* of whom you shall have notice, to answer to all such matters and things as on his majesty's behalf are, on oath, objected against him by *C. D.* for playing at cards, dice and other unlawful games, not having any estate, or follows any employment to maintain himself, against the
statute

statute in such case made and provided :
hereof fail not at your peril. Given under
our hands and seals this day of
1753.

Stat. 9 Ann. c. 14. 2 G. 2.

Commitment of a gamester.

To the keeper of New Prison, Clerkenwell.

Middlesex, } **R** ECEIVE into your custody
to wit, } the body of J. S. herewith
sent you, brought before us by J. P. constable of the parish of S. and charged upon the oath of C. D. for playing at cards and dice, and other unlawful games, at the house of, &c. not having any visible estate or employment for his support and maintenance, and not giving security for his good behaviour for a twelvemonth, pursuant to the statute in that case made and provided, and him safely keep in your custody until he be discharged by due course of law. Given under our hands and seals this day of 1753.

Game.

Game.

Information against an unqualified person for destroying the game.

*The information of L. R. made before me
J. D. esquire, one of his majesty's justices
of the peace for the said county.*

Middlesex, } **T**HIS informant saith, That
to wit, } R. L. of the parish of S. in
the said county, yeoman, on the day of
J. last past, then not having in his own pro-
per right, or in the right of his wife, lands,
tenements, or any other estate of inheritance
of the clear yearly value of 100 *l.* or for term
of life, nor then having an estate for ninety-
nine years, or for any longer term, of the
clear yearly value of 150 *l.* nor then being
the son and heir apparent of any esquire, or
any other person of higher degree, nor lord
of any manor, nor owner or keeper of any
forest, parish, chace or warren, being stocked
with deer or conies for his necessary use, nor
being a game-keeper of any lord or lady of
any lordship or manor, nor being truly and
properly a servant of any lord or lady of a
manor, nor immediately employed and ap-
pointed to take or destroy the game, for the
sole use and benefit of such lord or lady, nor
in any manner qualified, allowed or autho-
rized by the laws of this realm, to have, use
or keep for himself or any other person or
persons,

persons, any gun or guns, greyhound or greyhounds, or any other engine to kill and destroy the game, or to have in his custody or possession any hare, pheasant or partridge on the day of J. at the parish of S. in the county aforesaid, unlawfully and unjustly had in his custody and possession one hare, &c. against the form of the statutes in that case made and provided, whereby he the said R. L. hath forfeited the sum of five pounds. Dated the day of 1753.

J. D. of the parish of S. in the county of M. yeoman, maketh oath, That the above information is true, and that the said R. L. on the said day of had in his custody or possession one hare, &c. in manner as in the said information is mentioned.

Sworn the day
of 1753.
before me

5 Ann. c. 14.

Summons against the party to attend the justice to shew cause why the penalty of 5l. should not be levied.

To R. L. of the parish of S. in the county of Middlesex.

Middlesex, **YOU** are hereby to take notice, That L. R. having on the day of the date hereof exhibited to and before me J. D. esquire, one of his majesty's justices of the peace for the said county, an infor-

information and complaint against you the
 said *R. L.* (being a person not qualified by
 the laws of this realm so to do) on the
 day of at in the said county,
 unlawfully and unjustly had in your custody
 or possession one hare, or one partridge, &c.
 or offered to sell one hare, &c. or saw him
 with greyhounds kill or destroy one hare,
 &c. contrary to the form of the statute in
 that case made and provided; I the said ju-
 stice have appointed to hear all parties there-
 upon, and to examine and determine of and
 concerning the cause of the said complaint in
 the said information mentioned upon the
 day of at of the clock in the
 noon of the same day at at
 which time and place you are hereby requi-
 red to be and appear before me, to shew
 cause (if you can) why the penalty of 5*l.* by
 you forfeited for your said offence, should
 not be levied upon you; but if, at the time
 and place aforesaid you neglect to appear
 before me, I shall then and there proceed to
 examine into the cause of the said complaint,
 and give such judgment thereupon, as to
 me shall seem just and agreeable to law: and
 I do hereby authorize and require *W. B.* of
N. to serve this my summons, and to attend
 me at the time and place above appointed,
 then and there to make a return to me of
 the execution hereof. Given under my hand
 and seal the day of 1753.

By virtue of the above written warrant I
 have summoned the above named *R. L.*
 as I am above authorized and required.

Warrant

*Warrant to levy the penalty of 5*l.* by distress.*

To all constables and other his majesty's officers for keeping the peace for the said county, and every of them.

Middlesex, } **W**HEREAS *R. L.* of the
to wit, } parish of *S.* in the said
 county, hath; on the day of the date hereof,
 upon the oath of *L. R.* been duly convicted
 before me *J. D.* esquire, one of his majesty's
 justices of the peace for the said county, upon
 an information duly exhibited before me, for
 that he the said *R. L.* (being a person not
 qualified by the laws of this realm so to do)
 on the day of at the parish of
 in the said county, unlawfully and unjustly
 had in his custody or possession one hare, &c.
 against the form of the statute in that case
 made and provided, by reason whereof he
 hath forfeited the sum of 5*l.* which said sum
 of 5*l.* he hath refused to pay: these are there-
 fore in his majesty's name to require and
 command you the said constables, and every
 of you, forthwith to levy by distress and sale
 of the goods and chattels of the said *R. L.*
 the said sum of 5*l.* rendring to him the over-
 plus (if any such shall be) the charges of di-
 straining being first deducted; and that you
 forthwith pay one moiety or half part to the
 said *L. R.* the informer, and the other moiety
 or half part thereof to the churchwardens and
 overseers of the poor of the parish of

aforsaid, where the said offence was committed, for the use of the poor of the said parish, according to the direction of the statute in that behalf made: and such of you as shall serve this my warrant, are further required to give me an account how you have executed the same. But if in case there cannot be found goods of the said *R. L.* sufficient to levy the said sum of 5*l.* then and in such case you, by a return of this my warrant, are forthwith to certify the same to me the said justice: hereof fail not at your perils. Given under my hand and seal this day of in the year of the reign of our sovereign lord *George* the second, by the grace of God of *Great Britain, France and Ireland* king, defender of the faith, &c. and in the year of our Lord 1753.

I *W. S.* constable of the parish of, &c. do hereby humbly certify to the within named *J. D.* one of his majesty's justices of the peace for the county of *M.* that by virtue of the within written warrant, I have made diligent search for the goods and chattels of the within named *R. L.* and that I do not know, nor can I find out or discover that the said *R. L.* hath any goods or chattels whatsoever, by distress and sale whereof to levy the within mentioned sum of 5*l.* according to the command of the warrant within written. Witness my hand the day of 1753.

This certificate must be writ on the back of the warrant of distress.

M

Hill

Hill against Bateman.

THE defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying the game; (and though, as was proved) the plaintiff had effects of his own which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods; and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the chief justice was of opinion the action well lay. 1 *Strange's Rep.* 710.

Commitment to the house of correction for not paying the penalty.

*To all constables of the parish of
and others his majesty's officers for keeping
the peace for the said county, and also to
the keeper of the house of correction for
the said county, and to every of them.*

Middlesex, } WHEREAS by a warrant
to wit, } under the hand and seal
of *J. D.* esquire, one of his majesty's justices
of the peace for the said county of *M.* bearing date the day of reciting, That
R. L. of in the said county, had on
the day of the date thereof been duly convicted before me, for that he being a person
not qualified by the laws of this realm so to
do,

do, on the ^{10th} day of ^{January} at the parish of ^{St. Mary} in the said county, unlawfully and unjustly had in his custody or possession one hare, &c. against the form of the statute in such case made and provided, by reason whereof he the said *R. L.* had forfeited the sum of 5*l.* I the said justice did command all constables of the said parish of ^{St. Mary} and others his majesty's peace officers for the said county, to levy by distress and sale of the goods and chattels of the said *R. L.* the said sum of 5*l.* And I do further require such of the said constables of, &c. and other peace officers, as should serve my said warrant, to give an account how they had executed the same; and in case there should not be found goods and chattels of the said *R. L.* sufficient to levy the said sum of 5*l.* then and in such case, by a return to be made to my said warrant, such officer was forthwith to certify the same to me the said justice: and whereas ^{John Doe} constable of the said parish of ^{St. Mary} in the said county, to whom my warrant was delivered, and the execution thereof did belong, by a return and certificate under his hand bearing date the ^{10th} day of ^{January} had certified to me, that the said *R. L.* had no goods or chattels by distress and sale whereof to levy the said 5*l.* These are therefore in his majesty's name to require and command you the said constables of ^{St. Mary} and every of you, forthwith to arrest and take the said *R. L.* and him safely to convey to the house of correction of and for the said county, and deliver him to the keeper of the said house of correction, together

ther with this warrant: and you the said keeper of the said house of correction are hereby in his majesty's name to receive the said *R. L.* into your said house of correction, and him there safely to keep for the space of three months without bail or mainprize (this being the first offence of this nature) according to the form of the statute in that case made and provided; and for your so doing this shall be to you and each and every of you a sufficient warrant: hereof fail not as you will answer the contrary at your peril. Given under my hand and seal the day of
 of 1753.

Higlers, chapmen, carriers, innkeepers, victuallers, &c. having in their custody any hare, pheasant, partridge, heath-game, &c. to forfeit for every hare, &c. 5*l.* unless sent by some person qualified; selling and offering to sale the same penalties. Persons keeping dogs, &c. to forfeit 5*l.* or be sent to the house of correction for three months. *Stat. 5 Ann. c. 14.*

Killing game liable to the penalties of 5*Ann. c. 14.*

Game-keepers to be entered with the clerk of the peace. 5*Ann. c. 14.*

And game-keepers are to be either persons qualified to kill game, or be servants to lords of manors, and not tenants, &c. under the penalties of 5*Ann. 3 G. 1. c. 11.*

Penalties recoverable by action of debt, &c. as well as information, before justices of the peace. 8*G. 1. c. 19.*

Suits

Suits for the recovery of pecuniary penalties for offences committed after the 25th of *March* 1753, against the game laws, may be brought before the end of the second term after the offence committed. *Stat.* 26 G. 2.

Lords of manors may authorize gamekeepers to seize guns, dogs, &c. of unqualified persons.

Persons qualified to keep guns, &c. are such as have free warren, lords of manors, or who have 100 *l. per annum* of inheritance, or for life, or lease for ninety-nine years of 150 *l.* a year.

Stat. 28 G. 2. enacts, that if any person, whether qualified or not to kill game, shall sell or offer to sale any game, shall be subject to the same penalties as inflicted upon higlers, chapmen, &c. for buying, selling or offering of game to sale.

If any hare or other game shall be found in the shop or possession of any poulterer, salesman, fishmonger, cook or pastry-cook, the same to be deemed an exposing to sale. *Stat.* 28 G. 2.

Black act.

If any persons armed with swords, fire-arms or other weapons, and having their faces blacked or disguised, appear in a forest, park, &c. and hunt or kill deer, rob any warren, fishpond, or shall set fire to a house, shoot at any person, send threatening letters demanding money, &c. is felony; and persons being charged with offences by information,

mation, justices of the peace to certify to a secretary of state, whereon an order of council shall be made for offenders to surrender, &c. Stat. 9 G. 2. c. 22.

Persons convicted a second time of hunting or taking away deer in inclosed forests, &c. or coming armed with intent to do it, who shall beat or wound any keeper, &c. to be transported. 10 G. 2. c. 32. 17 G. 2. c. 40.

The statute of the 27th of G. 2. explains the said statute of the 9th of G. 2. which says, for the more effectual punishing wicked and evil-disposed persons going armed and disguised, by sending letters without a name, or signed with a fictitious name; but as divers letters have been sent threatening their lives, or burning their houses, but not demanding money, venison, &c. are not subject to the penalties of the 9th of G. 2. it is therefore enacted, that if any person or persons, after the 21st of May 1754, shall knowingly send a letter without a name subscribed thereto, or signed with a fictitious name, &c. threatening to kill or murder any of his majesty's subjects, or to burn their houses, barns, &c. though no money or venison, or other valuable thing be demanded, or shall forcibly rescue any person in custody of an officer or other person for any of the said offences, shall suffer death as in cases of felony without the benefit of the clergy. Stat. 27 G. 2.

Gaulers.

Gaolers.

THE statute 22 & 23 Car. 2. enacts, that To suffer prisoners to send for beer, &c. under a penalty. no gaoler or any other person whatsoever, to whose custody or keeping any one arrested or taken shall be committed, on any pretence whatsoever shall hinder him or her, at their will and pleasure, to send for beer, ale, &c. and pay such chamber-rent as the statute directs; and the said statute inflicts a penalty of 50*l.* for not permitting prisoners so to do; and yet the said gaolers of *Bridewell, New Prison, Newgate*, and the *Borough*, insist they are not comprehended under the penalty of the said statutes, although they are licensed as publick houses to sell beer, ale, &c. and these gaolers let out their taps generally to their deputies, some for 30*l.* 40*l.* and 100*l.* a year; and how must this rent be paid? why truly on the miseries of poor distressed objects at the rate of 1*s.* per night for their lodging, at 4*d.* a quart for their beer. I must submit it to the discretion of the justices of the peace, whether a gaoler ought to have any licence at all, unless they conform to the statutes made for that purpose.

I must further observe, that by the common and statute laws of this kingdom, while Not to suffer prisoners to die for want. a prisoner is in gaol, the gaoler is bound to give him sustenance, and not to suffer him to die for want.

That gaolers or governors of the houses of correction are to have such sums of money

allowed them by the justices of the peace within the county at the quarter-sessions of the peace, to be paid them quarterly, for the purposes abovesaid. *Stat. 43 Eliz. 17 G. 2.*

Those gaolers are under the justices direction, who are to inquire and visit the houses of correction twice every year, and report the state thereof at the next general or quarter sessions. But how those several acts have been complied with, must be submitted to be inquired into. *17 G. 2. c. 5.*

Prisoners how
to be support-
ed in prison.

Every person committed to the house of correction is to be supported and maintained by his labour, so much as he can earn at some employment or other.

That beating of hemp is the chief employment of those places; for which the gaoler gets for every one so employed 1s. a day, and the poor creature that so works has only from six in the morning to six at night, one penny brick at fourteen to the dozen: and I have been credibly informed, that those gaolers of the houses of correction frequently receive 3*l.* a week for the labour of those unfortunate objects abovesaid, clear of all charges; so that houses of correction are places purposely for gaolers to get estates, and not for reformation and correction, according to the statutes of 39 *Eliz. c. 4.* and 17 *G. 2. c. 5.*

Justices in-sessions have power to tax every parish in the county for the relief of prisoners in gaol, not exceeding 6*d.* or 8*d.* a week; and this tax is to be levied every *Sunday* by the churchwardens, and quarterly paid to the constables; or if in a corporation, then to the
the

the chief officer of the same, and such officer, &c. is to pay the same to the collector every quarter-sessions, who is to distribute it weekly; and officers neglecting their duty are liable to forfeit 5*l.* 14 *Eliz. c. 5.*

And by the 43d of *Eliz.* justices shall rate every parish in their counties for the *King's Bench* and *Marshalsea* prisoners, &c. that they may receive 20*s.* a year out of every county. And by the 19th of *Car. 2. c. 4.* justices of the peace may provide for setting poor prisoners at work, so as no parish be rated above 6*d.* per week.

A gaoler taking more than his fees is guilty of extortion. 3 *Inst.* 142. Taking more than his fees is extortion.

If a gaoler detains a prisoner in gaol after his acquittal, unless it be for fees (not for meat, drink or lodging) this is unlawful imprisonment. 2 *Inst.* 53.

No fees are to be taken by gaolers, but such as are allowed by law, and settled by the judges. 2 *G. 2. c. 22.*

Gaolers on a commitment for breach of the peace, or other misdemeanor, cannot put his prisoner in irons, nor even for felony, unless he attempts to escape, notwithstanding the common practice of gaolers to the contrary is unwarrantable, and contrary to law, by which gaolers are forbid to put their prisoners to pain or torment. See *Mirror of justice, c. 5.* which says, that it is an abuse, that prisoners should be charged with irons before they be attainted or convicted of felony; and the lord *Coke*, in his comment on the statute of *Westminster*, expresses himself to the same purpose. 2 *Inst.* 381. Not to put prisoners in irons.

Neither

Gaolers.

Neither can gaolers receive an offender without a *mittimus* from a justice, without subjecting themselves to a fine and imprisonment by indictment, or by action for a false imprisonment, because it is taking upon themselves an authority not warrantable, in making themselves judges of record. 2 *Inst.* 46, 47, 201. 3 *Inst.* 209.

That gaolers taking fees of persons committed to their charge by the constable of the night, and afterwards discharged by the justice, is extortion, and detaining them for such fees is false imprisonment; because by intendment of law they never were in the gaoler's custody, but in the custody of the constable, for the reasons abovesaid. See **Constable**, p. 89.

The court of king's bench has a general superintendency over all persons, who are in any respect ministers of justice, may award an attachment against any gaoler using a prisoner barbarously and inhumanly. *Hawk. P.C. part 2. p. 152. 6 Mod. 137.*

Hawkers

Hawkers and pedlars.

The information against hawkers and pedlars, exhibited before a justice of the peace.

Middlesex, } **T**HE information of *A. P.*
to wit, } made before me *R. C.*
 esquire, one of his majesty's justices of the peace for the said county, that a person who calls himself by the name of *W. Davis*, was on the 17th day of *February* in the year of our Lord 1752, between the hours of one and two of the clock of the same day, in the parish of *St. Mary, Islington*, in the said county, found going from house to house trading as a hawker, pedlar or petty chapman; and that he the said *W. Davis* did then and there carry or sell a parcel of woollen caps, garters, scissors and other things; and that the said *W. Davis* did not, although required so to do, produce any licence, as the law in that case made and provided directs, to qualify the said *W. Davis* for his trading.

The oath.

I *A. P.* of the parish of *Hornsey* in the county of *Middlesex*, yeoman, make oath, that the above-mentioned information is true, and that I was then and there present, and did see the said *W. Davis* trading, as in the information

hawkers and pedlars.

formation is mentioned; and that the said *W. Davis* did not produce any licence, although demanded as aforefaid.

A. P.

Sworn the 17th day
of *February* 1752.
before me

R. C.

*The form of the warrant of distress after
the conviction before a justice of the
peace.*

*To the constables or headborough of St. Mary,
Islington, and to all other persons whom
these presents shall concern.*

Middlesex, } **F**ORASMUCH as *W. Davis*
to wit, } was upon the information of
A. P. the 17th day of *February* in the year
of our Lord 1752, before me *R. C.* esquire,
one of his majesty's justices of the peace for
the said county, by the said *A. P.* headbo-
rough, and was informed against by the said
A. P. (*but if the informer be not constable or
headborough, then name the informer, and say,
brought before me by the constable or head-
borough*); that the said *W. Davis* not being
in any publick mart, market or fair within
the kingdom of *England*, dominion of *Wales*,
or town of *Berwick upon Tweed*, did, on the
17th day of *February* in the year 1752, trade
as hawker, pedlar or petty chapman, carry-
ing to sell, or exposing to sale, divers goods,
wares and merchandizes, of which he was
not

not the real maker or worker, nor child, apprentice, agent or servant of such maker or worker; and upon the oath of *A. P.* who was the headborough, and likewise the informer (*but if there be another informer, then name him, as mentioned above*) convicted by me of being guilty of all the facts in the said information contained: and forasmuch as the said *W. Davis* did not, although by me required so to do, produce before me a licence for him so to do, pursuant to the act of parliament in that case made and provided, whereby the said *W. Davis* hath forfeited the sum of 12 *l.* these are therefore in his majesty's name, and by the authority of the aforesaid act, to will and require you, immediately upon sight hereof, to levy the said forfeiture of 12 *l.* by distress and sale of the goods, wares and merchandizes of the said *W. Davis*, rendring the overplus, if any there be, to the said *W. Davis*, after true deduction of the reasonable charge for taking the said distress, and out of the monies so levied to pay the said *A. P.* (*or who shall be the informer, as is mentioned above*) one moiety, and the other moiety to the use of the poor of *St. Mary, Islington*: hereof fail not at your peril. Given under my hand and seal the 17th day of *February* in the 25th year of the reign of our sovereign lord *George the second*, king of *Great Britain, France and Ireland*, defender of the faith, &c. *anno Domini 1752.*

By the stat. 9 & 10 *W. 3.* there shall be paid by every hawker for a licence the duty of 4 *l.* each year; and with a horse 8 *l.*

Hedges and orchards.

Persons travelling without licence to forfeit 12*l.* for every offence; one moiety to the informer, and the other to the poor of the parish wherein such offender shall be discovered.

Any person may detain such hawker until he produce a licence, or until notice to some parish officer, churchwarden, &c. who are to carry such hawker before a justice, and upon confession of the party, or proof by a witness upon oath, of his trading without licence, the said justice, by warrant under his hand and seal, to levy the said forfeiture.

Hedges and orchards.

Warrant to levy the penalty for breaking of hedges.

To the constable of B. in the said county.

Middlesex, } **W**HEREAS it hath been
to wit, } duly proved before me,
 one of his majesty's justices of the peace for
 the said county, that *T. P.* of *B.* in the said
 county, labourer, hath within six weeks last
 past broke the hedges of *J. S.* of *B.* (*or as
 the case shall be*) contrary to the laws in that
 case made and provided; I do therefore
 hereby appoint the said *T. P.* within five
 days after notice hereof, to pay unto the said
J. S. 9*s.* in recompence and satisfaction of
 the

the wrong so done, as aforesaid: and if the said T. P. shall not pay the same, that then you inform me thereof, that such further proceedings may be had against him for the said offence, as the law requireth: and hereof fail not. Given under my hand and seal this day of 1753.

But before the justice should issue his warrant to whip such person for non-payment of the within mentioned sum of 9 s. the constable that served such warrant must return on such warrant, that the person within mentioned was duly served with such warrant, and that he had not paid the said sum of 9 s. according to the time in the warrant within mentioned.

The prosecution must be in six weeks.
Stat. 15 Car. 2.

Warrant to whip a person for breaking hedges.

To the constables of the parish of E. in the said county.

Middlesex, } **W**HEREAS it hath been
to wit, } duly proved before me,
that T. P. of B. in the said county, did on
the 13th day of this instant break the
hedges of J. S. standing in the said parish of
E. contrary to the laws in that case made and
provided; and it appears to me, that the
said T. P. is not able to make satisfaction for
the wrong he hath done, as aforesaid; I do
therefore

therefore hereby order that the said *T. P.* be whipped by the constables of *E.* or one of them, as the law in that case requireth. Given under my hand and seal this day of 1753.

The same penalty for robbing orchards and stealing corn. *Stat. 43 Eliz. c. 9.*

Highways.

Assessments.

WHERE the justices of the peace at their general quarter-sessions shall be satisfied, that the highways cannot be sufficiently amended, assessments upon persons usually rateable to the poor shall be made and levied by such persons and in such manner, as the justices at such sessions shall direct and appoint. *Stat. 3 & 4 W. & M. c. 12.*

No such assessments are to be made in any one year, which shall exceed 6*d.* in the pound of the yearly value of the lands, &c. nor 6*d.* for every 20*l.* personal estate.

How the rates and assessments are to be made.

These rates and assessments must be made and levied by such persons and in such manner, as the justices in their sessions shall direct and appoint, and the money must be employed, according to their order, for repairing the highways; and if not paid within ten days after demand, may be levied by distress,

stres, notwithstanding the six days work by former statutes be not performed; but it is generally understood where the statute-work falls short. 1 G. c. 48.

Any person grieved by such assessment may appeal to the quarter-sessions, whose order to be final.

When surveyors have laid out their money in repairing of the highways or in materials, &c. upon making oath before the justices of the peace at their special sessions, of what sums they have expended, two justices in the said sessions may cause an equal rate and assessment to be made for reimbursing the surveyor, according to the methods prescribed by the statute of 43 Eliz. for relief of the poor; and if any refuse to pay what shall be assessed on them (being allowed under the hands and seals of the said justices) the surveyors are impowered to levy the same by distress and sale of the goods, &c. 3 & 4 W. & M.

The assessment is to be made upon every inhabitant, parson, vicar, and other occupier of lands, tithes, woods, &c. in the parish; and if the 6d. in the pound ordered by the 3 & 4 W. & M. be not sufficient to repair the ways, after the same is levied and employed, the justices in their special sessions may order the whole parish to contribute for the repairs thereof.

Draughts, and days to work.

Days appointed to work.

BY the stat. 2 & 3 P. & M. constables, surveyors of the highways, &c. are to appoint four days between *Easter* and *Midsummer* for the amendment of the highways, and to give publick notice of it in the church the next *Sunday* after *Easter*.

The four days appointed by the preceding statutes are augmented to six days by the 5th of *Eliz.* the first seasonable time is before harvest, and they are to be amended before the feast of *St. Luke*.

Carriages to be sent out, and by whom.

Every person in the parish keeping a draught or team, or having a plough land, either in arable or pasture, is to send out a wain or cart furnished with oxen, horses or other cattle, according to the custom of the country, and two able men, to work eight hours every day appointed by the surveyor, upon pain of 10 s. for every default of a cart with two men, and 3 s. for every man and horse to be employed in repairing of the highways. 2 & 3 P. & M. 2 Car. 2. c. 12.

Every person and carriage is to be provided with shovels, spades, pick-axes, and other tools and instruments necessary; and in places where carriages are not used, horses, &c. are to be sent with able persons under the penalties above. Stat. 22 Car. 2.

What is meant by a plowed land.

Formerly a hundred acres, but now eight: by the stat. 7 & 8 W. 3. 50 l. *per annum* is a plowed land.

If a man keeps several draughts in a parish, he is obliged to send a team for each draught, whether he possesses any land in the parish or not; and he who occupies several plow lands ought in like manner to send a team for each, whether he keeps any draught or not. *Raym.* 186. 3 *Keb.* 567. *sed vide* the stat. 18 *Eliz.* c. 10.

He who keeps a draught, and but two horses, ought to give his attendance with it for repairing of the highways. *Dalt.* 105.

If all the carriages in the parish shall not be thought necessary by the surveyors, then the person whose carriage is spared is to send out two able men to labour the days appointed, or shall forfeit 1 s. a day for either of them not sent. 2 & 3 *P. & M.*

Upon default of sending carriages, or working on the highways, &c. the surveyor on complaint to the next justice will have a warrant to levy the forfeiture by distress and sale.

In appointing the fix days to work on the highways, the justices, &c. must not do it generally, but particularly; the particular days are to be set forth in the indictment, and the parties are not bound to come to work, unless the days are thus particularly appointed. *Salk.* 357.

A person keeping a coach and pair of horses is bound to send out a wain towards the repair of the highways; a coach and horses doing equal damage to the ways as a cart and horses. 1 *Lev.* *Dalt.* 105.

Persons keep-
ing coaches to
send out a
wain.

Surveyors to
erect posts on
cross ways.

Justices of the peace at their special sessions shall direct their precepts to the surveyors of the highways, requiring them, where two or more cross ways meet, to erect a stone or post with an inscription, directing travellers to the next market-town to which each of the said cross ways leads. 3 *E* 4 *W*. *E* *M*. 8 *E* 9 *W*. 3.

And in case the surveyors neglect so to do for the space of three months, shall forfeit 10 s. to be levied by warrant of one justice, directed to the constable, requiring him to distrain and sell the goods of such offender, and imploy the money to the said purposes.

How many
sorts of high-
ways.

There are three sorts of highways, viz. a foot way, a horse way, and cart way.

The king's highway (*regia via*) leading either to the market, or from town to town, *E* *c*. the freehold and soil thereof, and the interest of the trees and other profits thereupon growing, belong to the lord of the soil or lord of the manor. *Dalt.* 76.

It is called the king's highway, for that the king hath at all times passage for himself and all his people, and may punish all nufances therein. *Ibid.* 77.

The authority of justices is limited only to common highways, and not to private ways; so that the presentment, *E* *c*. of a justice of the peace of a private way is not allowed to be good. 4 *Mod.* 38.

If a way leads to a market, is a way for travellers, and has a communication with a great road, *E* *c*. it is a highway; but if it leads only to a church, to a village, fields, *E* *c*.

Ec. there it is a private way. *Ventr. Rep.* 189.

Any foot way common to all people is a highway, although it do not lead to a market-town; and a nuisance in it is punishable by indictment. 6 *Mod.* 255.

In cases of trials concerning the repairs of highways, those who are chargeable to repairs shall not be admitted as evidence, but a person no way liable to such reparations will be a good evidence. *Hil.* 14 & 15 *Car.* 2.

If any person shall maliciously break down a turnpike in any highway, he shall be sent to gaol for three months, and be publicly whipt; second offence transportation, 1 *G.* 2. c. 24. made felony by the 5th of *G.* 2. c. 33.

Persons qualified to serve the office of surveyor of the highways by the statute, are such as have estates in land in their own right, or in right of their wives, of 10*l.* *per annum*, or a personal estate of 100*l.* or are occupiers of houses, lands, &c. of the yearly value of 30*l.* if such there be, and if not, then the most sufficient inhabitants shall serve the office. 3 & 4 *W. & M.* c. 12.

The qualification of surveyors of the highways.

All manner of injuries to highways are adjudged nuisances, as laying of logs of timber, erecting a gate, or making a hedge athwart it, permitting boughs of trees to hang over the road, digging ditches, or suffering ditches adjoining to the highway to be foul, which render the way less commodious to the king's people, are publick nuisances at common law, and also by the statutes. 2 *Roll. Abridg.* 137.

What are adjudged nuisances in highways.

Persons laying logs of timber, &c. in any highway, though there be sufficient room left for travellers, he shall be liable to the penalty of 5*s.* leviable by a justice's warrant. 3 & 4 *W. & M.*

Permitting soil to lie in the highways eight days after notice, to forfeit not exceeding 5*l.* nor under 40*s.* 1 *G. 1. c. 52.*

If any common or private way that leads from a village, &c. to a parish church or fields, without any communication with a great road, be ruinous and out of repair, every inhabitant has a right to bring an action. 1 *Ventr. 208.*

Fines.

JUSTICES in sessions may impose fines for not repairing of highways. *Stat. 2 & 3 P. & M.*

Two justices may take the account of a high constable, and compel him to pay the fines to the petty constable, or commit him; but he must be allowed 8*d.* *per* pound for gathering, and 12*d.* for the fee of the estreat.

The inhabitants of *Cluworth* were indicted for not repairing a common foot way, and confessed it, and submitted to a fine. *Per cur'*; the matter is not at an end by the defendants being fined; but writs of *distingas* shall be awarded *in infinitum* till the way is certified to be repaired; but the defendants are not bound to put it in better repair than it has been time out of mind. *Salk. 358.*

Inclosures.

Inclosures.

IF any particular person shall inclose any part of a way or waste adjoining, he thereby takes upon him to repair that which he so incloses. *Style* 364.

Where a man makes an inclosure, and he thereby straightens the highway on both sides, though the parish repaired it before, yet now he is obliged to maintain it at his own charge; but if he lays open the inclosure, and leaves the way as it was before, then the parish is to repair it again. *Cro. Car.* 336.

In case a common highway shall be inclosed after a writ of *ad quod damnum* issued and executed, any person injured or aggrieved by such inclosure may complain to the justices at the quarter-sessions next after such inquisition, who may hear and finally determine the same, &c. but if no such appeal be made, then the said inquisition and return recorded by the clerk of the peace is for ever binding. *Stat.* 8 & 9 *W. 3. c.* 16.

The person grieved by the inclosure is to bring his appeal the next sessions after inquisition found, as I have above observed, and no inclosure can be made by virtue of an inquisition, according to the *ad quod damnum*, without licence, and not by virtue of the act of parliament: in the case of *The queen* against *Ogden* an order was affirmed at the quarter-sessions of the peace for the county of *Dorset* made by two justices of the peace of the said county, founded on the clause of the 8th of *W. 3.* for enlarging the highways: there was

an *ad quod damnum* sued, and an *ad nullius damnum* returned, and an order thereupon made for inclosing such an ancient highway, and setting out ground for another in such a place; and an appeal from this order to the sessions, where the inclosure was declared a nuisance to the whole country. *Mod. cases* 45, 46.

Indictments.

How indictments for nuisances are to be drawn.

IN indictments for nuisances the place in which the nuisance complained of was done, is to be expressed, the extent of the nuisance in the way to be set forth, as how many foot broad or long; the way wherein a nuisance is alledged, must be a common highway; the fact alledged against the defendant is to be expressed in such terms, that it may plainly appear to the court to have been a nuisance.

An indictment for a nuisance in a highway was quashed, for it ought to have been the king's highway: and in an indictment against a person for not repairing the highway, the way was laid to be the king's highway and the common street; but not mentioning for all the king's people, it was quashed. *Co. Litt.* 56. *Cro. Eliz.* 63.

An indictment against the inhabitants of a hamlet within a parish, for not repairing the highway, was quashed, by reason a hamlet cannot be charged to repair a highway, unless it be by prescription, &c. *Style* 163.

But though a hamlet be not obliged to repair of common right, yet a vill may. *Ibid.*
The inhabitants of Mile End. A

A warrant to levy the forfeiture for not sending a team and workmen to work on the highways.

To the surveyor of the highways in the parish of N. in the said county.

Middlesex, } **W**HEREAS C. D. surveyor
to wit, } of the highways of and
in the parish of N. in the county aforesaid,
hath this day made oath before us, that A. B.
who keeps a horse, team, and hath a plow
land in the said parish of N. did refuse to
send any team to work in the repairing of
the highways on, &c. last past, one of the
days appointed for that purpose, though due
notice had been given him by the said C. D.
contrary to the statute, whereby he hath for-
feited the sum of 10s. These are therefore
in his majesty's name to command you to
levy the said sum of 10s. by distress and sale
of the goods and chattels of the said A. B.
rendering to the said A. B. the overplus (if
any be) unless such sum, together with the
reasonable charges of taking, keeping and
selling the same, pursuant to the statute in
such case made and provided, be paid within
days; that you do imploy it for and to-
wards the amending the highways in the said
parish of N. Hereof fail not. Given under
our hands and seals this day of 1754.

Stat. 2 & 3 P. & M. Stat. 27 G. 2. says,
unless the sum be paid within days, not
to exceed eight, nor under four.

Upon

Whether a person can put in a traverse to an indictment for a nuisance.

Upon a conviction the decay of the highway cannot be traversed; but the defendants may plead that some other person ought to repair it, and traverse that they ought not. *Kel. Rep.*

Any justice of the peace upon his own knowledge may present at the general quarter-sessions, offences concerning highways; upon which the court may assess a fine, tho' the offender be absent, which fine shall not be taken off, unless the party presented do certify the amendment of the ways. 2 & 3 P. & M.

Whoever is indicted or presented at any court, except a court leet, for any offence relating to the highways (unless it be by presentment of a justice of the peace) may traverse the whole matter alledged against him in such indictment or presentment; but he who is presented for such an offence in a court leet, can only traverse it so far as it concerns his freehold, as by charging with being bound to such repairs in respect of the tenure of his lands, &c. for which purpose he may remove it by *certiorari* into the king's bench, and there traverse the same. *Dyer* 14.

A presentment of a justice of the peace upon his own knowledge is of the same effect in law, as a presentment upon the oath of twelve men; fines may be thereupon assessed at the sessions, saving to all persons who shall be touched by such presentments, to have their usual traverse to the same, as they might have to any indictment of trespass; upon this presentment the defendants may

may traverse the presentment of the justices, and plead the way is repaired; for the presentment is no more than an inquisition; or they may plead *reparare non debent*, and that such a person, naming him, ought to repair. 4 *Mod. Rep.* 38.

The case of the inhabitants of Hornsey,
Trin. 3 W. & M. B. R. 1691.

THE justices of the peace upon their view presented, that a common highway leading from such a place, &c. to the church of *Hornsey*, was out of repair, and that the inhabitants thereof ought to repair it.

Upon a traverse to this presentment the jury find that the way was out of repair, but that it was not a common highway.

The question was, whether this should not have been pleaded specially, or whether it might be given in evidence upon the traverse.

And it was insisted, that this depended upon the construction of the statute of the 5th of *Eliz.* upon which this presentment is founded, and upon that clause thereof wherein it is enacted, that the presentment of a justice of the peace upon his own knowledge shall be of the same effect in the law, as a presentment upon the oath of twelve men, who may thereupon assess fines, saving to every person and persons who shall be touched by such presentment to have his lawful traverse, as they might have to any indictment of trespass.

Now

Now on an indictment upon this very statute, this matter might be given in evidence upon the general issue; for if it had been pleaded, that it was an highway, such would amount to no more than not guilty, and would not have been good.

If then it might have been given in evidence upon this plea, the presentment in this case is extrajudicial; for the authority of the justices is limited only to common highways, and it is found to be a private way; now, they having a particular and limited jurisdiction, when they exceed that, what they do cannot be justified; it is not like what they do relating to the poor, for in that case they are judges.

Curia; Upon this very statute the defendant may traverse the presentment of the justices, and give in evidence, that the way is in repair; for the design of the statute was to make the presentment no more than an inquisition: but before the statute he could not have taken a traverse, for then the justices, as in cases of forcible entry, were the only judges, which could not be traversed.

Hale's P. C. 155. says, a presentment by a justice of default in repairs of an highway, though by the statute of the 5th of *Eliz. c. 13.* it is such a presentment as the parties shall be put to answer, yet it is not conclusive; but the traverse of the party is saved by the statute, and it is but reason; for though the view of the justice can ascertain the decay for want of repairs, yet it cannot ascertain in what parish it lies, or who is bound by tenure or prescription to repair.

There

There are no presentments that are in themselves convictions, and not traversable, but a presentment in a leet of blood shed, or the like, and in the swainmote court of the forest, for offences of vert and venison; but even those offences are traversable. 2 Hale's P.C. *ibid.*

The power of justices of the peace about highways.

BY the stat. 1 G. I. c. 48. the justices of the division are to hold a special sessions in the division, &c. every year on the third of January, or within fifteen days after, which they are to give notice of ten days before they hold the same, to every constable within the division.

The justices precept to the constables to bring in a list of persons fit to serve as surveyors.

THESE are to give you notice, that on Monday the third day of January next, at the house of S. in the parish of F. in the county of M. there will be a special sessions held for putting the acts of parliament in execution relating to the repairing the highways; when and where you are hereby required personally to be and appear, and to bring with you a list of the names of the persons within your parish fit to be surveyors of the highways for the year ensuing, viz. such as have an estate of 10*l.* per annum, have a personal

personal estate to the value of 100*l.* or do rent 30*l. per annum*; and if you have not any such, a list of the names of the most sufficient persons in your said parish, according to the directions of the act of parliament in that case made and provided, &c. Given under our hands and seals this day of *January* 1751.

Stat. 3 & 4 W. & M. c. 12.

They are to nominate under their hands and seals, out of the list brought unto them, one or more surveyors of every parish within the division, for the year ensuing, and upon their refusal, the party so nominated to pay the forfeiture of 5*l.* by warrant upon oath of within six days after notice given to the party chosen surveyor, by leaving a copy of the justices order by the constable at the party's house, and on refusal to forfeit 5*l.* to be levied on their goods by distress and sale, by warrant of two justices; which warrant the said justices are required to make on the information of one credible witness upon oath; the moiety of which forfeiture to the informer, and the other to the repairing the highways: and in such case the justices shall nominate some other, who shall upon like notice take upon them the office under the same penalty. And constables, &c. not returning such lists of names shall forfeit 20*s.* to be levied in the same manner as aforesaid.

An appointment of a surveyor of the highways by the justices of the peace.

AT a special sessions held for the highways at the house of *A. B.* in the parish of *C.* in the county of, &c. on the day of, &c.

We whose names are hereunto subscribed, being his majesty's justices of the peace in the county of *M.* do hereby appoint *A. B.* of, &c. (one of the persons mentioned in a list this day returned to us, by *L.* constable of, &c.) surveyor of the highways in the parish of, &c. aforesaid, for and during the space of one whole year next ensuing the date hereof, according to the form of the statute in that case made and provided. Given under our hands and seals this day of *February* 1753.

A warrant to levy the forfeiture for refusing to serve the office of surveyor.

Middlesex, } **W**HEREAS *A. B.* of, &c.
to wit, } was, at a special sessions holden, &c. legally nominated and appointed to serve the office of surveyor of the highways, in and for the parish of, &c. for the year ensuing; and it having been duly proved before us, that the said *A. B.* had notice of the said appointment within six days after the same was made, and that he hath refused to take upon him the said office, whereby he hath forfeited the sum of 5*l.* one moiety to be

be paid to *L. F.* of, &c. who hath informed us of the said offence, and the other moiety to be applied towards the repairing of the highways: these are therefore to command you to levy the said forfeiture of 5*l.* on the goods and chattels of the said *A. B.* by distress and sale, to be paid and imployed as aforesaid; and that you do forthwith return to us, or some other justices of the peace, &c. the names of other persons within your parish fit to serve the said office of surveyor of the highways. Given under our hands and seals this day of *February* 1753.

The form of an assessment for repairing of the highways.

AN assessment made on the inhabitants of the parish of, &c. in the county of, &c. for and towards the repairing and amending of the highways in the said parish, the day of, &c. in the year 1753.

		<i>s.</i>	<i>d.</i>
<i>A. B.</i> gentleman,	—	7	6
<i>C. D.</i> yeoman,	—	5	0
<i>E. F.</i> merchant,	—	5	0
<i>G. H.</i> &c.	—	5	0
<i>J. K.</i> &c.	—	3	0

Memorandum; This day of, &c. the above assessment was allowed and confirmed by us *R. C.* and *J. H.* two of his majesty's justices of the peace for the county of *M.* aforesaid; and we do hereby empower *H. L.* surveyor of the highways in the said parish,
to

to ask, demand and levy the same of the several persons above-mentioned, as the act of parliament directs (or to levy the same by distress, if not paid in ten days). Given under our hands and seals the day and year above written.

R. C.

J. H.

Surveyors of the highways are to give publick notice from time to time, every four months, in the parish church the next *Sunday* after sermon ended, of what defaults they find in the reparation of the ways, and if the same be not amended within thirty days after, such surveyors shall within thirty days amend the same, and dispose of annoyance for the repair of the highways, and be reimbursed their charges by the party who should have done the same. *Stat. 3 & 4 W. & M. c. 12.*

Surveyors to give notice every four months of defaults in highways.

Notice of defaults in the highways.

I A. B. surveyor of the highways within the parish of, &c. do hereby give notice, that the highways leading from, &c. to, &c. in the said parish, is not repaired and amended as it ought by the persons concerned, and that the same should be repaired by, &c. within thirty days, as the act directs.

Surveyors not giving an account of the defects of highways, and of those who are bound to provide labourers and teams for the reparations of ways, forfeit 5*l.* unless they

Surveyors not giving such notice, the forfeiture.

O

make

make such reasonable excuse as shall be allowed by the justices in their special sessions. *Stat. 1 G. 1. c. 48.*

An order of justices for surveyors to dig gravel, &c.

Order of justices to dig gravel.

WHEREAS *A. B.* and *C. D.* surveyors of the highways of and in the parish of, &c. have this day made complaint unto us *E. F.* and *G. H.* esquires, two of his majesty's justices of the peace, that there is not sufficient gravel, sand, stones, &c. in the said parish of, &c. for the necessary repairs of the highways therein; We do therefore, according to the direction of the statute in that case, hereby order and allow the said surveyors or either of them, and such person and persons as they or either of them shall appoint, to dig, take and carry away gravel, sand or stones, out of any waste or common in any parish or village in the neighbourhood of the said parish of, &c. without paying any thing for the same, to be employed in repairing and amending the highways aforesaid, so as they do fill up the place from whence such gravel, &c. shall be so digged (if required by the owner of the soil). In Witness, &c.

May dig gravel in any ground contiguous.

Surveyors may dig gravel in any ground contiguous to the highway, except it be in a garden, orchard, meadow, &c. provided it be but in one pit or hole, not above ten yards over at most, and that the whole be filled with earth within a month, at the charge of the parish. *Stat. 5 Eliz. c. 13.*

Warrant

Warrant to levy the forfeiture for laying logs of timber, &c. in the highway.

To the constables of, &c. in the said county.

Middlesex, } **W**HEREAS A. B. of, &c.
to wit, } has this day exhibited his complaint upon oath, to us C. D. and E. F. esquires, two of his majesty's justices of the peace for the said county, that G. H. of, &c. did, on or about, &c. last past, lay several pieces of timber, heaps of large stones, &c. in the highway leading, &c. and the same doth there still remain, to the obstruction of travellers, and contrary to an act of parliament in that case made and provided, whereby he hath forfeited the sum of 5s. one moiety to the informer, and the other to be applied towards amending the said highways: These are therefore to require you to levy the said sum of 5s. on the goods and chattels of the said G. H. by distress and sale thereof; and when it shall be so levied, that you do pay and apply the same as aforesaid. Given under our hands and seals this second day of March 1753.

Stat. 3 & 4
W. & M.

Warrant to summon people that have not done their duties on the highways.

To the constables of N. in the said county.

Middlesex, } **T**HESE are in his majesty's
to wit, } name to require and authorize you on sight hereof, that you give per-

sonal notice to *A. B. C. D.* and *E. F.* that they be and appear before us, two of his majesty's justices of the peace in and for the said county, on *Monday* next by eleven of the clock in the forenoon, at the house of, &c. in the parish of, &c. to shew cause why they should not be severally fined according to the several statutes in that case made and provided, for neglecting their six days work on his majesty's highways in the parish of *N.* aforesaid. Given under our hands and seals this second day of *M.* 1753.

2 & 3 P. & M. c. 8. 5 Eliz. c. 13. 18 Eliz. c. 10.

Warrant to levy certain sums on persons who have not done their duties on the highways.

To the surveyors of the highways in the parish of N. in the said county.

Middlesex, } **W**HEREAS complaint hath
to wit, } been made before us upon
oath, that due notice hath been given to *A. B. T. P. J. O.* and *J. S.* all of the parish of *N.* aforesaid, labourers, to work on the highways in the said parish on certain days lately appointed for that purpose, in order to amend the same, and that they and each of them have neglected and refused so to do: These are therefore to require you forthwith to levy the respective sums hereafter mentioned upon the respective goods and chattels of the said several persons by distress and sale thereof; that is to say, upon the goods of *A. B.* for neglecting

Stat. 22 Car.
2. c. 12.

neglecting two days, 3s. upon the goods of T. B. for neglecting three days, 4s. 6d. rendering to them and each of them the overplus, if any be, unless such sums, together with the charges of taking, keeping and selling the same, be paid within days, pursuant to the statute in such case made and provided; and that you imploy the said sums when levied, for and towards the amending the highways in the said parish of N. And hereof fail not. Given under our hands and seals this second day of *March* 1753.

	s.	d.
Penalty, every day labourer,	1	6
Every man and horse, —	3	0
Every cart with two men,	10	0

The form of a presentment made by a surveyor of the highways.

I A. B. surveyor of the highways of and within the parish of, &c. in the county of, &c. do hereby present, that the highways leading from, &c. to, &c. in the said parish, is very much out of repair, and dangerous to all travellers that pass that road; and that the inhabitants of the said parish of, &c. ought of right to repair and amend the same.

I do also present upon oath, that C. D. of the said parish of, &c. has lately carried out stinking carcasses and other filth into the said highway, to the great annoyance thereof, &c.

That from and after the 24th of *June* 1753, if any person getting any gravel, stones or chalk, &c. for repairing highways, shall make any pit or hole in any common

Where any pit or hole shall be made for getting gravel, to be fenced, &c.

or waste ground, shall forthwith cause the same to be sufficiently fenced during the time the same shall be kept open, and within fourteen days after to be filled up, sloped down, and fenced off; and in case such person shall not fill up, slope down, and keep the said fence in good repair, any justice upon view, or information of one witness, to order the person making such pit or hole to fill up and properly slope down the same, and on refusal to comply therewith within ten days after receipt of such order, upon proof upon oath made before any one justice, to forfeit not more than 10*l.* nor less than 40*s.* to be laid out and applied in filling up such hole and pit, and repair of the roads in the parish where the offence shall be committed, in such manner as the said justice shall direct, to be levied by distress and sale. *Stat. 26 G. 2.*

Highways and turnpike road.

The fellies of wheels of waggons, carts, &c. except as therein mentioned, to be nine inches broad.

THAT from and after the 29th of September 1754, the fellies of the wheels of waggons, wains, carts or wheel carriage, (other than hereafter mentioned) travelling on turnpike roads, to be nine inches broad; every owner of such waggon, &c. driving contrary to such directions shall pay 5*l.* or forfeit one of the horses of such waggon, &c. not being the shaft horse, with the accoutrements to such horse, to the sole use of the person who seizes the same: the distress to be delivered to the constable, or some parish officer near the place of such seizure, who is to take charge

charge thereof till proof upon oath be made before some justice of the peace of the offence; and the justice is to issue his precept to such constable or officer, to deliver the horse, &c. so forfeited, paying reasonable charges as such justice shall allow. If proof be not made within three days, the distress to be returned.

Any chaise marine, coach, landau, berlin, chaise or calash, are excepted; nor shall extend to any waggon drawn by less than five horses, or any wain, cart or two-wheel carriages drawn by less than four horses, or any waggon, wain, cart or other wheel carriage, drawn by oxen or neat cattle only.

That immediately after the passing this act carriages laden with one tree or piece of timber, or one stone or block of marble only, having the fellies of the wheels nine inches broad, may be drawn with any number of horses; and also any waggon or four-wheel carriages, with any number not exceeding eight, and carts with any number not exceeding five, without being liable to be weighed, or to the additional toll of 20 s. by the statute of 24 G. 2. and without being liable to forfeit any of the horses by the stat. 6 G. 1.

Immediately after passing this act waggons, &c. with broad wheels may be drawn with any number of horses not exceeding eight.

And carts, &c. with any number not exceeding five.

Trustees for the roads to lessen the extraordinary tolls on carriages with broad wheels drawn by more than a certain number of

horses, in such manner as no greater toll be demanded and taken for waggons and other four-wheel carriages, drawn by five or four horses; and the said trustees are to give directions for that purpose to the collectors to receive such tolls, and no more.

That the said trustees, or any five or more of them, shall meet in their several districts from time to time, as there shall be occasion, some time on or before the 29th of *September* 1754, and to cause notice of such meeting ten days before such meeting; and the said trustees, or any five of them, are required at such meeting, by writing under their hands, to order and direct the surveyors to cause all the ruts to be levelled before the 29th of *September* 1754, and the roads to be widened where necessary, on or before the 29th day of *September* 1754.

The charges thereof to be paid out of the tolls.

Surveyors to cause the ruts, &c. to be beat down in the roads intervening between and communicating with two different turnpike roads, on or before the 29th of *Sept.* 1754.

Persons refusing to do their statute work thereon, to bear their proportion of the charge; two justices may by warrant empower the surveyors to levy the same in such manner as the rates for repairing the highways are to be raised and levied.

That the trustees may order the fellies of the wheels of waggons, wains, carts, &c. to be measured at any turnpike.

That in case it shall appear to the satisfaction of the surveyors or gate-keepers of any turnpike, that the fellies of the wheels of
any

any waggon, &c. were originally nine inches, and by use reduced to no less than eight, they are exempted from the penalty.

That if any person shall obstruct the measuring the fellies or making distress, or seizing any horse forfeited, shall forfeit and pay the sum of 10 *l*.

That after the 29th of *September* 1754, if any person shall drive, or act as a driver of any waggon, wain, &c. not having wheels of the breadth according to the direction of this act, or drawn with more than the numbers of horses (except before excepted) that then any constable or any other inhabitant, or surveyor of the highways, or any other inhabitant, to take such driver before a justice of the peace, and upon conviction, either by confession of the party or oath of one witness, to forfeit 5 *l*. to be applied and recovered in such manner as other penalties are hereby directed, and for want of distress to be committed to the house of correction for the space of one month, or until he shall pay the said 5 *l*.

That owners of waggons, &c. travelling for hire after the 29th day of *September* 1754, who shall drive such waggon, &c. in any turnpike road, not having his or their names and place of abode in large letters on the tilt, &c. shall be subject to the penalties as the owners of waggons, &c. having fellies under the breadth aforementioned; and using false or fictitious names shall forfeit 50 *l*.

The penalties and forfeitures, not otherwise provided by this act, shall be recovered by action of debt, bill, plaint or information,

or in a summary way before two justices, at the option of the prosecutor.

Justices upon complaint exhibited are, within ten days after such offence committed, to summon the parties accused, and also the witnesses on either side, and in not appearing upon such summons, upon oath made of the facts abovementioned, upon proof of notice given, such justice to proceed to the examination of witnesses on oath, and give judgment accordingly; and where the party is convicted of such offence, the said justice to award warrants for levying the penalties adjudged, together with costs, on the goods of the offender, and make sale thereof, if not redeemed within five days; and if no goods be found, the offender to be committed to prison for three months, or until the penalty shall be paid. Persons aggrieved may appeal to the general quarter-sessions on fourteen days notice to be given of such appeal, and a recognizance with sureties to be entered into within five days after such notice. Justices may mitigate the penalties, or set aside the conviction, or may confirm the same with costs, to be levied by distress and sale, and for want of distress to be committed to the county gaol, not exceeding two months; and if such person shall live out of the jurisdiction of the court, any justice of the peace of the county wherein such person shall inhabit may levy the same by distress, upon producing a true copy of the order for payment of cost, proved on oath, and for want of distress to commit such person to the common gaol, not exceeding two months, until payment of such costs. That

That all pecuniary penalties levied to be paid, one half to the person who shall inform, and the other to the trustees for repairing the roads.

The laws relating to turnpike roads shall be put in due execution, and the trustees to make orders for that purpose, and to appoint persons for carrying on prosecutions for offences against this or any of the said laws.

Surveyors and other officers to be diligent in their duty.

This act to be publickly read in the presence of the said officers, as often as there shall be a meeting of the said trustees, or any five or more of them; and officers found negligent in their duty to be removed.

Victuallers are disabled from holding any place of trust under the trustees, or of farming the same.

When the trustees prosecute, the charges to be paid out of the tolls.

The trustees not obliged to prosecute, unless upon confession of the offender, or one or more witnesses be produced.

That if any Action shall be commenced, the same must be within six calendar months next after the fact committed. Any defendant or defendants in every such action may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuit or discontinue, or if upon demurrer judgment shall be given against the plaintiff, to recover treble costs. *Stat. 26 G. 2.*

Homicide. See Coroner.

Indiſſiments.

Indictments.

Indictments,
how to be
drawn.

INDICTMENTS must be drawn with care, both as to matter and form; to which end, in all indictments of felony or trespass, it is good to say, against the peace.

But these words (with force and arms) *viz.* with swords, &c. are not always necessary, yet it is good to use them; but in an indictment of forcible entry they are needless, because the word *force* implies as much; but you must conclude *contra pacem*. 2 Cro. 32. 3 Cro. 186.

In an indictment for treason, murder, felony or trespass, the words (with force and arms) are necessary; otherwise of offences against the peace only, as conspiracies, slanders, deceipts, escapes for debt.

In indictments upon statutes it is not needful nor safe to recite the statute, for the misrecital in the matter, year, day or place, is fatal; but it is safe to conclude it thus, *scil.* against the form of the statute in such case made and provided, or of divers statutes, &c. where there are divers statutes that concern the offence. 4 Co. 48. Dyer 365. Bulst. 212.

Yet though indictments need not be recited, the substance and material words of it must be fully set down. Plowd. 79. Co. Lit. 98. b.

If a bill of indictment be for murder, and the grand jury return it *billa vera quoad* manslaughter,

slaughter, and *ignoramus quoad* murder, the usual course is in the presence of the grand jury to strike out the words *malitiose & ex malitia sua præcogitata & murdravit*, and leave in so much as to make the bill to be but bare manslaughter, and so receive it.

But the safest way is to deliver them a new bill for manslaughter, and they to indorse it generally, *billa vera*; for the words of the indorsement make not the indictment, but only evidence the assent or dissent of the grand inquest: it is the bill itself that is the indictment, when affirmed; and so in like cases, where the bill contains two offences, as burglary and theft, forcible entry and detainer. *H. 4 J. B. R. Tel. 99. Ford's case. Hale's P. C. 162. 2 pt.*

If the jury upon an indictment give in their verdict, and say, they are agreed, the court may examine them by poll, and if in truth they are not agreed, they are fineable. *2 Hale's P. C.*

Note; Every indictment must be brought for some crime committed, either against the common or statute laws of this kingdom; and such indictments must be at the suit of the king, for that the king cannot put any man to answer, but he must be apprized by indictment, presentment or other matter of record. *3 Inst. 126.*

As to the prosecution of offences above-mentioned, it may be done either by indictment first presented to the grand jury, or in the common way by application to a justice of the peace, by attaching the person by warrant, and binding him over to the sessions by

Jury, when fineable.

How prosecution of offences is to be done.

Indictments.

What the
word traverse
to an indict-
ment is.

by recognizance, who must either appear and traverse such indictment, or plead guilty.

As to the word traverse, it is that which the defendant saith in bar to avoid the plaintiff's bill, by confessing and avoiding, by denying and traversing the material parts thereof: to traverse an indictment is to take issue upon the chief matter, and to contradict and deny some point of it.

And liberty of traverse is commonly restrained to indictments of trespasss, contempts, riots, and other inferior offences, and is not extended to treasons or felonies. *Lamb. 544.*

Now let us consider whether traversing an indictment be not in some cases unnecessary and expensive.

A man may know himself innocent of the crime alledged against him, yet to save charges he may plead guilty, and may give any matter in evidence in mitigation of damages; as that the prosecutor made the first assault, &c. because you cannot plead to an indictment no other plea than guilty or not guilty, as you can upon action at law for an assault, &c.

And if any action should be brought for damages, the plea of guilty is always denied to be given in evidence, although it was formerly the practice.

Pleading guilty to an indictment is only an implied confession.

Note; An express confession upon an indictment is full evidence, not an implied confession; as here the defendant submits to a fine as above, rather than contend with the king. *Trials per pais 166.*

As in the case of *The queen* and *Templeman*, upon a motion to submit to a small fine
after

after a confession of the indictment, which was for an assault, *Holt* chief justice took the difference, where a man confesses an indictment, and where he is found guilty; in the first case, affidavit may be read to prove the prosecutor made the first assault; that is, *son assault* upon the defendant; otherwise where the defendant is found guilty; for the entry upon the confession is only *non vult contendere cum domino rege, & ponit se in gratiam curiæ*. Salk. 55. Lambard 544.

Notice must be given of such plea in this manner:

The king against W. R.

Mr. M. W.

TAKE notice, that I will appear at the next general (or if it be at the quarter-sessions, then say, quarter) sessions of the peace to be holden at *Hick's hall* in *St. John's street* in and for the county of *Middlesex*, on *Saturday* next at ten of the clock in the forenoon, when and where I will plead guilty to any indictment which shall be preferred by you against me for assaulting you, &c.

W. R.

Dated the 14th day
of May 1754.

A *certiorari* not to be served after the jury is sworn. 1 Salk. 144.

Certiorari,
when to be
served.

A motion for a *certiorari* to remove an indictment of barratry found at the sessions of gaol-delivery, and *Nurse's case* cited, wherein such motion was granted: but *per cur'*,

cur', it is never granted to remove an indictment found before justices of gaol-delivery, without some special cause suggested; for should it afterwards appear false, a *procedendo* should be awarded. 1 *Salk.* 144.

A pawnbroker may be indicted.

If a pawnbroker refuses upon tender of the money to redeliver the goods pledged, he may be indicted; for being secretly pawned, it may be impossible to prove a delivery in trover for want of witnesses; *per Holt* chief justice, and *Eyre.* *Salk.* 522. *B. R.*

A pawnbroker's servant took a pawn, the pawner came and tendered the money to the servant, he said he had lost the goods; upon this the pawner brought trover against the master, and it was held well; *per Holt* chief justice, in the case of *Jones and Hart, Mich. 10 W. 3. Salk. 441. 1 Mod. Rep. 198. 3 Mod. 332. Salk. 613, 614. Hob. 206.*

Indictments in one county may be taken in another.

Regularly the grand jury can inquire of nothing but what ariseth within the county for which they are returned; but by special custom indictments of offences committed in one county may be taken in a place out of the county, as indictments of offences in *Middlesex* are by custom taken to the sessions hall at *Newgate* in *London*, as well for *Middlesex* as *London*; yet the trial must be by a jury of the proper county. 3 *Inst.* 31, 32.

Where many are indicted of one felony or trespass, and all plead to issue as not guilty, the clerk of the crown of the king's bench ought not to take for the *venire*, nor for the entering of the plea, more than 2 s. of them all. *Stat. 2 H. 4. c. 10.*

Clerk

Clerk of the peace likewise not to take above 2s. for drawing any bill of indictment against a felon, under the penalty of 5*l.* *Stat. 10 & 11 W. 3. c. 23.*

Upon removal of an indictment the defendant enters into a recognizance to try it; yet this is not forfeited, unless the prosecutor gives rules; and so if one gives a recognizance to prosecute a writ of error with effect, the defendant must give rules, and nonsuit the plaintiff, or there is no forfeiture. *Salk. 370. The king and queen against Ball, Trin. 5 W. & M.*

Indictments removed, defendants to enter into recognizances to try them.

In an indictment for barratry the defendant must have a note of the particulars that he is to be charged with, that he may know how they intend to charge him, otherwise they shall not proceed to trial. *5 Mod. Rep. 18. The king against Grace.*

If the party indicted for any offence under felony, will take exceptions to the indictment, either for the matter or form, he must by counsel acquaint the court therewith; and if the error be apparent, the indictment shall be immediately quashed, and the party discharged; but if the matter be doubtful or difficult, it may and ought, by a proviso in their commission, to take time to consider thereof; and if the party indicted be not willing to have his trial, either at the gaol-delivery or quarter-sessions, he may remove the indictment by writ of *certiorari*.

May take exceptions to an indictment under felony.

May remove indictments by *certiorari*.

If your indictment be for taking of dead things, it must be *bona & catalla*, expressing the name of the things in certainty; but if it

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be

Indictments.

be of things living, it shall not say, goods and chattels, but an horse, ox, sheep, &c.

The value or price of the thing, wherein the offence is done, must also be certainly set down, to shew the nature of the offence, and whether it be petit treason, larceny or not, as a certain cow, &c. of the price of 40 s. &c. feloniously took; for where the number ought to be expressed, as if it be for taking sheep, doves, &c. the indictment must say, of the price, or to the value, so much, or else it is not good: and therefore an indictment against *A.* that he imported one load of hay, omitting to the value, was adjudged void. An indictment in felony or trespass, for taking goods and chattels, without expressing the name and value, was adjudged void for incertainty; so an indictment for breaking a close and carrying away of corn, omitting to the value, is naught. 9 *Ed.* 4.

The matter itself, the nature of the fact and offence, and the manner of doing it, must be also clearly set forth, that it may be distinguished and seen what the offence is, whether treason, felony, &c. and against what law it is, otherwise the indictment or presentment will not be good: and therefore if the indictment be that *A.* was taken for felony, feloniously, and he permitted to go at large, and doth not say for what felony he was taken, this is naught. 8 *Ed.* 4. 4.

So that if a man be indicted for making a hundred shillings of alchymy, like the manner of *English* money, and doth not alledge what money it was, groats or pence, this is naught. *Fitz. Indictment*, fo. 10.

And

And therefore in murder and manslaughter it is good to exprefs the ftroke whereof the death enfued. *Dyer* 69.

If the indictment be, that he killed him with a dagger, and it was with a fword, it is good. *Co.* 9, 67.

An indictment may be good for ftcaling goods *cujusdam ignoti*, yet the property muft be proved in fomebody at the trial, otherwife it fhall be prefumed that the property was in the prifoner by his pleading not guilty to the indictment; for a man fhall not be found guilty of felony and hanged upon prefumption. *Mod. Ca. fo.* 149.

An indictment lies for not taking the office of a conftable. 2 *Strange's Rep.* 920. A conftable and an overfeer indictable for not taking the office.

An overfeer not taking upon him the office after chofen, is indictable; the difobeying of an act of parliament is indictable upon the principles of the common law, in the cafe of *The king* againft *Jones*. *Ibid.* 921.

Cannot join feveral in one indictment for perjury. *Ibid.*

If there be two degrees of an offence, as making and publishing, and the indictment fpeak but of one, it is naught. 6 *H.* 7. 12.

If an indictment be againft an accelfary, the manner of the felony muft be fet down.

1 & 3 *Ed.* 6. c. 24.

In all perfonal actions, fo in indictments, prefentments, &c. the day and year when the offence was committed, and fometimes the hour, muft be certainly fet down; as, the 10th of *March* in the year of our Lord, &c. now, or the indictment will not be good; for if a man be hurt above a year before, it

Indictments.

is no felony: and for trespass against penal statutes, the offence must be done within a certain time before. *Stat. 13 Eliz. 5. 39 Eliz. 1. 2 Jac. 4. See page 2.*

Two were indicted for a conspiracy, and the question was, whether they could be admitted to defend *in forma pauperis*, and upon consideration and search of precedents the court declared, they were of opinion they might; for though it was not within the stat. 11 H. 7. c. 12. which relates to civil suits only, yet it might be reasonable to do it on indictments at common law, where the prosecutor, who can have no costs, is not prejudiced; and a rule was made on the usual affidavit, for the defendants being admitted *in forma pauperis*. In *B. R. 2 Strange's Rep. 1341.*

If an indictment be against J. S. for a stroke the 4th of *August*, and death thereby the 19th of *December*, and it goeth further, and saith that *T. M. &c.* the time of the felony and murder, the 4th of *August, &c.* feloniously were present assisting, *&c.* it was adjudged insufficient, for the murder was not till the last day; it should have been in manner and form aforesaid: also in this it was agreed, that the clause of aiding, *&c.* is necessary in this case, and that without it the indictment cannot be supported by argument or implication. *Co. 4 Rep. 42, 47. 5. 120. 9. 62.*

If an indictment be against *A.* who was present when *B.* was murdered, and say not, that he did strike, aid, comfort or cause to be stricken, it was quashed. *Brook Indict. 15.*
If

If an indictment be, that *A.* feloniously cut down trees, and those carried away, or with force and arms cut down trees, and feloniously carried away, neither of these will make it felony, it may be a trespass; for no felony can be in trees standing: but if it be with force and arms cut down trees, and those feloniously (at another time after) took and carried away, this may be felony; and where in an indictment of felony feloniously is wanting, it may nevertheless stand good to make it trespass; though an indictment that is faulty (as it seems) cannot be salved by amendment, as other records may, yet it may be avoided by plea before judgment, by exception for error before or after judgment, and by a writ of error after judgment, or outlawry, which may be had in the king's bench after removal of the indictment thither; but if a man will avoid it for any formal fault in the addition, it must be done before the party hath pleaded to the indictment, for by it he taketh upon him to be the same person. 8 *Ed.* 4. 15. 35 *H.* 6. 12.

A man may plead in abatement to an indictment, as misnomer in the christian name, but not in the surname; but it is a good plea in abatement unto an appeal.

In an indictment against a constable for refusing to execute a justice of the peace's warrant, the indictment must set forth the nature and tenor of the warrant, or else it is not good. 1 *Ventr.* 325.

Information.

Demurrer to an indictment.

Whether a demurrer can be to an indictment.

A Demurrer is a confession of all such matters in fact only, as are well and sufficiently pleaded. *5 Rep. 208.*

In all cases of felony where a man pleads a special matter, though he concludes his plea not guilty to the felony, or do not conclude it so, yet if his plea be tried or found against him, he shall be put to his plea of not guilty, and be tried for the felony; for though a man shall lose his land in some cases for mispleading, yet he shall not lose his life for mispleading. *2 Hale's P. C. 257.*

Information.

What an information is.

AN information is the accusation of a party against an offender before the justices of the peace, for the king or the party's own benefit, to the intent to put the party to answer.

In informations the very county wherein the thing was done must be expressed, except for champerty, extortion, or for matter of corrupt usury, or for ingrossing or regrating, where the penalty appears to be 20*l.* or above, and some other cases, which may be laid in any county, as pleases the informer. *Stat. 31 Eliz. c. 5.*

How many kinds of informations.

Informations are of two kinds; such as are at the suit of the king, and partly at the
the

the suit of the party, which are commonly called informations *qui tam*, from these words in the information when the proceedings were in *Latin*; *qui tam pro domino rege quam pro seipso, &c.*

An information lies at the common law for a great variety of crimes less than capital, as batteries, cheats, perjuries, riots, extortions, nuisances, contempts, and such like things. 2 *Hawk.* 260.

But an information or action *qui tam* will not lie on any statute which prohibits a thing, as being an immediate offence against the publick good, unless the whole or part of such penalty be expressly given to him who will sue for it: but where such statute gives any part of such penalty to him who will sue for it by action or information, any one may bring such action or information, and lay his demand as well for our sovereign lord the king as for himself. 3 *Hawk.* 265.

The sessions hath no power without express words.

If jurisdiction be given to the sessions to hear and determine, and it is not said by information, this shall be by indictment, and not by information. *Cro. Car.* 112.

Clerk of the crown of the king's bench not to receive or file any information for trespass, battery, &c. without express order in open court, and not to issue any process without taking a recognizance in 20*l.* penalty to prosecute with effect, &c. and if the party appear, and the party do not procure a trial in a year, or if a verdict pass for the defendant, &c. the court to award the defendant

Information.

dant costs, &c. Persons outlawed in this court for any thing except treason or felony, not obliged to appear in person, but may appear by attorney, and reverse the same without bail, except where special bail is ordered. This act not to extend to informations, but such as are exhibited in the name of their majesties coroner or attorney, who is commonly master of the crown office. Pleas and informations, on the demise of the king to stand without calling the defendants to plead anew, unless they request it. *Stat. 4 & 5 W. & M. c. 18.*

Information against a person for a great fraud.

Middlesex, } THE information of T. W. of
to wit, } the of in the
county aforesaid, taken before me, one of his majesty's justices of the peace for the said county, the day of 1754, upon his oath deposeth as followeth :

That this informant having brought from *Norwich* pieces of stuffs and callimancoes to dispose of, one M. L. a Jew, a pretended broker, came to this informant's lodgings, and told this informant he would help him to one M. C. a Jew, a ready money customer for his goods, who agreed to give this informant 50 l. 15 s. for the said goods ; and this informant was to take one half in snuff and the other in ready money ; and this informant went with the said M. to a warehouse in *Duke's place*, where the said L. and

and the said *M.* gave this informant a taste of the said snuff, which he approved of, and contracted for a barrel of the same, provided the same was of equal goodness and a merchantable commodity, which this informant agreed to take at 2 s. 9 d. per pound, which came to 28 l. and the balance to be paid to this informant being 22 l. 15 s. the said *M.* then assured this informant, if he would bring the said stuffs to the said *M.*'s house, he would pay him the said 22 l. 15 s. upon which this informant, on the day of this instant, brought the said goods to the said *M.*'s house, when the said *M.* assured this informant, that if he would write a receipt in full on the bill of parcels made by this informant, he would then pay him the said sum of 22 l. 15 s. which this informant did so accordingly do, and apprehended the said *M.* would have paid the said 22 l. 15 s. to this informant; but instead of paying this informant offered this informant his promissory note, payable in six weeks, which this informant refused to take, and insisted to have his said goods again; but the said *M.* then desired this informant to go with the said *L.* to a certain tavern in the neighbourhood; and the said *L.* and the said *M.* assured this informant, that he would there bring him the said 22 l. 15 s. at which place the said *L.* and the said *M.* accordingly came, but pretended the said *M.* had been disappointed of the said money, but said he would get this informant the said money by the next morning; and the said *L.* took this informant to his house, and assured this informant that

that he would go to one *A.* as he pretended, a distiller in *Cow-lane*, and would get ready money for the said note, and accordingly he the said *L.* went with this informant to the said *A.* in *Cow-lane*, where the said *A.* appeared, and told this informant he was master of the said house, and assured this informant he would advance the said money for the said *M.* if it had been 500*l.* and appointed to meet this informant at the *Bank* coffee-house at twelve of the clock of the same day, and would there pay him the said money; and the said *L.* and *M.* assured this informant he should have his said goods again, if the said *A.* never paid the said money, but carried and contrived to put off this informant to meet him, this informant, from one place to another, without coming near this informant, in order to deceive this informant; that this informant being so harrassed and deceived as aforesaid, came to the said *L.* and *M.* who persuaded this informant to take the said barrel of snuff, and the said *M.*'s note for the said 22*l.* 15*s.* And this informant further saith, that upon inquiry about the said *A.* he this informant finds the said *A.* only assumed to be the master of the said distiller's house in *Cow-lane* aforesaid, for that the said house is the house of one *T. M.* and not the house of the said *A.* and that the fraud was carried on by the contrivance and management of the said *L. M.* and the said *A.* on purpose and with design to cheat and defraud this informant of his said goods; and the rather, for that this informant is informed and assured, that the said *M.* is a prisoner

prisoner in *Wood-street* counter; that this informant discovering the same to be a cheat and fraud carried on by the said *L. M.* and *A.* demanded his goods again according to his the said *M.*'s promise, but instead thereof the said *M.* did then threaten the life of this informant.

T. W.

Sworn the day and
year abovesaid,
before me

R. C.

It is convenient, though not always necessary to ground a warrant, to take an information upon oath, that a felony was committed, and that the informant suspects or knows *J. S.* to be the felon; and if suspected, then to set down the cause of suspicion; if the charge of felony be positive and express, it is fit to bind the party by recognizance to prosecute before the warrant be issued; but if it be only a charge of suspicion, and the business requires further examination, then it is not fit to bind over the party to prosecute, for possibly upon the bringing the party accused, and further examination of the fact, there may be cause to discharge him. See *Barlow's Justice of the peace*, fo. 47.

Not necessary
to bind the
party in a re-
cognizance to
prosecute on
suspicion of
felony.

Information against a person for obstructing a constable in his duty.

Middlesex, } THE information of *J. G.* taken before me, one of his majesty's justices of the peace for the said county,
to wit, }

Information.

county, the 3d day of *April* 1752, upon his oath deposeeth as followeth:

That *F. G.* did, about three of the clock this morning, in the watch-house in the parish of *C.* in the said county (this examinant, being then and there constable of the night, and in the execution of his duty of constable for the due keeping of the watch, and peace of his majesty's subjects) that then and at several times before did in a violent manner obstruct this examinant in the execution of his duty of constable, and also did profanely curse and swear oaths, and occasioned great disturbance, in breach of the peace, &c.

J. G.

Sworn the day and
year abovesaid,
before me

R. C.

An information against a person pursuant to the statute of distresses, for running away with his goods purposely with intent to defraud his landlord.

London, } **T**HE information of *J. F.* of
to wit, } the parish of *S.* in the county aforesaid, came before me, one of his majesty's justices of the peace for the said county, the day of *April* 1752, upon his oath deposeeth as followeth:

That he was imployed by *R. C.* attorney, to seize the goods and chattels of *J. P.* late of *S.* in the county of *M.* shoemaker, for
rent

rent due and in arrear for a house he rented of the said R. C. at S. aforesaid; which said goods and chattels this informant is well assured and believes were carried off clandestinely, with intent and purpose to defraud the said R. C. of his said rent; which said goods this informant is informed and verily believes, are lodged in the house of one L. F. a shoemaker in C. in the parish of S. aforesaid.

J. P.

Sworn the day and year
abovesaid at Guildhall,
London, before me

C. G.

*An information in order to obtain a judge's
warrant against a person for threatening
to burn a man's house.*

THE information of H. G. of G. in the
county of K. gentleman:

This informant upon his oath saith, that he being imployed as a special officer for the commissioners of the customs to take smugglers, this informant received out of the office of the solicitor of the customs, a warrant grounded on a *capias* against George W. of G. and on the first day of July last this informant arrested the said G. W. thereon, and told him he had a *capias* against him at the suit of his majesty, for 450*l.* and desired him to get bail thereto; whereupon the said G. W. drew a penknife out of his pocket, and swore he would kill this informant, and
imme-

Information.

immediately made several pushes with it at this informant, and at last did stab this informant in the left arm, and had not some persons come to this informant's assistance, he verily believes he should have been killed by the said *G. W.* the said *W.* at that time threatening that he would be this informant's butcher. And this informant further saith, that on the 3d day of *July*, about two of the clock in the morning, the said *G. W.* came to the house of this informant, and there made a great noise and disturbance, which caused this informant to get out of bed to see what was the matter, and to this informant's surprize found it to be the said *G. W.* whereupon this informant asked him, what business he had about his house at that time in the morning, upon which the said *G. W.* said, damn you, you ought to have your house fired about your ears, and you must expect it to be burnt shortly, and I wonder how you can sleep in it, for you may depend upon it, it will not be long before it will be set on fire: and this informant saith, that the said *G. W.* hath continued ever since that time to this, and still continues threatening this informant, that he will be revenged on him this informant, and do him a mischief whenever he could get an opportunity so to do, and particularly on the third day of *October* instant the said *W.* again assaulted this informant, and swore he would be revenged on him this informant; and had not this informant then escaped out of his hands, this informant verily believes he would have done him some mischief, if he did not murder him,

him; and also saith, that from the wound he received in his arm from the said *G. W.* he has not been able to do his business for above a fortnight, and that from the threats of the said *G. W.* he dares not go about his lawful occasions, for fear the said *G. W.* should do him a mischief; and likewise this informant is afraid of being burnt in his bed from the threatening of the said *G. W.* to do the same; for which reason this informant craves the security of the peace from the said *G. W.* for which he apprehends he goes in danger of his life, or of some bodily harm that the said *G. W.* may do or cause to be done unto him; and that he doth not make this information out of any hatred or malice that he hath towards the said *G. W.* but only for the safety and preservation of his life.

H. G.

Sworn the 24th of

October 1738,

F. G.

Inns.

THE use of inns and alehouses was for the relief and lodging of travellers, and to supply the wants of those who were not able to provide for themselves in their travels. The use of inns and alehouses.

At common law it was lawful for any person to build an inn for the reception of travellers without licence; but if the innkeeper

fold

sold ale by retail to any person but travellers, he was punishable. *Hutton 99.*

Persons arrested not to be carried to alehouses or taverns without their consent.

The keeping of any alehouse, tavern, &c. by any serjeant, bailiff or other officer, is mischievous and to be suppressed, and this is usually practised in *B. R.* See the stat. 22 & 23 *Car. 2. c. 20.* against carrying a person arrested into alehouses or taverns without his consent, so as to charge him with any thing for meat or drink, nor any reward exacted for keeping him out of gaol.

Qu. whether this stat. is not expired.

And by the stat. 2 *G. 2.* all sheriffs, or other officer intrusted with the execution of process shall, before he carry a prisoner to any publick or other house, shew a printed copy of the clause in the said statute mentioned, whereby such officer is impowered to arrest, and permit such person so arrested, or any friend of his, to read the same before any liquor or meat shall be there called for; and in case any bailiff or other officer shall carry any person under arrest to any publick house, and there permit any liquor or victuals to be called for, before such clause or a copy of it shall be shewn to such prisoner, such neglect, besides the breach of the condition of his bond to the sheriff, shall be accounted a misdemeanor, and shall be punished as such.

That no sheriff, bailiff, serjeant or other officer whatsoever, shall carry any person, by virtue of any writ or other process, to any tavern, alehouse, or other publick drinking house, or to the private house of any such officer, or of any tenant or relation of his, without the free and voluntary consent of the person so arrested; or to charge any such person

person any sum of money for wine, beer, &c. save what he shall particularly ask for, until the person so arrested shall have given an appearance or bail; or take any reward or money for keeping the person so arrested in his custody, or carry such person to prison within twenty-four hours, nor shall take any greater sum for one or more nights lodging, than shall be allowed by the justices of the peace at some quarter-sessions, who are with all convenient speed to ascertain such expence within their respective counties. *Stat. 2 G. 2. c. 22.*

The case of Mr. *Budgell* in the king's bench—He was arrested by two bailiffs, and because the bailiffs refused to carry him to a house he desired, and because he did not read the clause in the act of the 2 G. 2. the bailiffs were ordered to pay him 5*l.* for his damages, and his cost and charges, and the bailiffs to stand committed for a contempt. 2 *Barnardiston.*

If one who keeps a common inn refuses to receive a traveller, and to find him victuals or lodging, upon tendering a reasonable price for the same, the innkeeper is liable to render damages in an action at the suit of the party grieved, and may be also indicted and fined at the suit of the king, and may be compelled by the constable of the town, parish, &c. to receive and entertain such person as his guest. 1 *Hawk. P. C.* 225.

If a horse be committed to an innkeeper, it may be detained for the meat of the horse, but not for the meat of the guest; for the chattels are only in the custody of the law

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for

for the debt that arises from the thing itself, and not from any other debt due from the same party. *Rol. Abridg.* 438. 8 *Rep.* 146, 147. 1 *Salk.* 388.

An innkeeper may detain a horse for his meat till paid, but cannot sell him; for that is good only by the custom of *London* and *Exeter*. 1 *Rol. Abridg.* 850.

By the custom of *London* and *Exeter*, if a man commit a horse to a hostler, and he eat out the price of his head, the hostler may take him as his own upon the reasonable appraisement of four of his neighbours; which was, it seems, a custom arising from the abundance of traffick with strangers that could not be known, to charge them with an action; but the innkeeper hath no power to sell the horse by the general custom of the whole kingdom. 1 *Vent. Moor* 876. 3 *Bulst.* 271.

But if one bring several horses to an inn, and afterwards takes them all away but one, the innkeeper may not sell the horse for the payment of the debt for the others, but every horse is to be sold to satisfy what is due for his own meat. 1 *Bulst.* 207, 217.

And an innkeeper that detains a horse for his meat cannot use him, because he detains him as in the custody of the law, and by consequence the detention must be in the nature of a distress, which cannot be used by the distrainer. *Moor* 877. 2 *Rol. Rep.* 438.

An innkeeper may detain the guest who eats, as well as his horse, till payment. 1 *Salk.* 388.

A man

A man puts his cattle to pasturage, and agreed to pay for every cow 12*d.* a week; these cattle cannot be detained for nonpayment of the pasturage, but is enforced to have his action against him that put them to pasturage, and is not like to the case of an innkeeper or a taylor; they may retain the horse or garment delivered them, until they be satisfied. *Cro. Car.* 271, 272.

By the common custom of the realm, if one leaves his horse at an inn to stand at livery, although neither he or his servants lodge there, he is reputed a guest, and the innkeeper hath a valuable consideration; and if the horse be stolen, he is chargeable with an action upon the common custom of the realm. *Cro. Jac.* 189.

But if a man leaves goods to keep, whereof the defendant is to have no benefit, and goeth from thence two or three days, although he saith he will return, yet he is no guest during that time, nor is the innkeeper chargeable as a common hostler for the goods stolen. *Ibid.*

If a theft be committed on a guest that lodgeth in an inn by the servants of the inn or any other persons (not the guest's servants or companions) the innkeeper is answerable in an action on the case; but if the guest be not a traveller, but of the same town, the master of the inn is not answerable. *8 Rep.* 32, 33.

In trover for three horses: the defendant kept a publick inn at *Glastonbury*, and that the plaintiff was a carrier, and used to set up his horses there, and 36*l.* being due to

Q 2

him

Judgment.

him for keeping them, which was more than they were worth; he detained and sold them *prout ei bene licuit*, and on demurrer judgment was given for the plaintiff; an innkeeper having no power to sell horses, except within the city of *London, &c.*

And besides, when the horses had been once out, the power of detaining them for what was due before, did not subsist at their coming again. 1 *Strange's Rep.* 556. *Jones and Pearl's case*, *Pasc.* 9 G. 1.

Judgment.

Court may assess a fine, but not award punishment, unless present in court.

THE court may assess a fine, but cannot award any corporal punishment against a defendant, unless he be actually present in court. 2 *Hawk.* 445.

Where there are several defendants a joint award of one fine against them all is erroneous, for it ought to be several against each defendant; for otherwise one who hath paid his proportionable part might be continued in prison till all the others have paid theirs, which would be, in effect, to punish him for the offence of another. *Ibid.* 446.

A fine is under the power of the court during the term in which it sets, and may be mitigated as shall be thought proper; but after the term it admits of no alteration. *Ibid.*

Jurors.

Jurors.

JURORS at the sheriff's turn to have 20*s.* *per annum* freehold, or 26*s.* 8*d.* *per annum* copyhold ; officers returning others to forfeit 40*s.* *Stat.* 1 *R.* 3. *c.* 4.

Panels returned to inquire for the king may be reformed by the justices of gaol-delivery, &c. and sheriffs to return the panels so reformed, under the penalty of 20*l.* *Stat.* 3 *H.* 8. *c.* 12.

The sheriffs of *London* may return panels of jurors in suits depending, triable in *London*, of such as are worth an hundred marks in goods. *Stat.* 4 *H.* 8.

Trials of felons in corporation towns may be by freemen worth 40*l.* in goods. *Stat.* 23 *H.* 8. *c.* 13.

The statute of 35 *H.* 8. *c.* 6. regulates the forms of writs of *venire*, &c. and ascertains issues to be levied on jurors for non-appearance ; and though the jury be made full by the *tales*, yet the jurors making default shall lose issues ; but upon reasonable excuse proved by two witnesses, the justices may discharge the issues for default.

By the stat. 4 & 5 *P.* & *M.* a *tales de circumstantibus* may be granted in a suit commenced upon a penal statute. In case the plaintiff forbear to pray a *tales*, it shall be granted at the request of the defendant. *Stat.* 14 *Eliz.* *c.* 9.

No jury to appear at *Westminster* for a trial, when the offence was committed thirty miles

The qualifi-
cation of ju-
rors.

off, except the attorney general require it.
18 *Eliz. c. 5.*

The stat. 27 *Eliz.* increases the qualifica-
tions of jurors from 40 s. to 4 l. *per annum*;
and by the 4 & 5 *W. & M.* jurors are to have
10 l. *per annum* freehold or copyhold, and
tales men 5 l.

By the 7 & 8 *W. 3.* if the plaintiff or de-
mandant shall not proceed to trial at the first
assizes after the *teste* of a *babeas corpus*, a new
writ of *venire* to be directed to the sheriff to
try the issue at another assizes, and the de-
fendant may bring the cause to trial by pro-
viso.

Sheriffs to return freeholders or copyhol-
ders on the *tales*; constables, &c. at *Michael-*
mas quarter-sessions, to return to the justices
of the peace lists of persons qualified to serve
on juries; and sheriffs to impanel no others,
&c. under the penalty of 20 l. The grand
inquest of the county of *York* to consist of
forty-eight freeholders and copyholders of
80 l. *per annum*.

Persons having served in juries not com-
pellable to serve again in four years in the
county of *York*; and sheriffs not discharging
a summons on such, shall forfeit 20 l.

Constables not returning lists of jurors shall
forfeit 10 l. 3 *Ann. c. 18.*

Venires out of the courts at *Westminster* to
be awarded of the body of the county, except
in cases of felony, murder, &c. 4 & 5 *Ann.*

Lists of jurors *c. 16.*

to be made

from the pa-
rish rates, and
fixed on doors
of churches.

Lists of jurors qualified to be made from
rates of parishes, and yearly fixed on doors
of churches, &c. and returning officers wil-
fully

fully omitting freeholders, or inserting others, shall forfeit 20*s*. Duplicates of the lists, when adjusted by the justices, to be delivered to the sheriffs by the clerks of the peace, on pain of 10*l*. and the sheriffs to enter the names of the persons in a book alphabetically. If any sheriff, &c. return other persons to serve on juries, or clerks of assize record any wrong appearance, they shall be fined by the judges, not exceeding 10*l*. nor less than 40*s*. like penalty for sheriffs taking money to excuse persons serving. *Stat. 3 G. 1. c. 25.*

The names of persons impanelled to serve to be written on distinct pieces of paper, and delivered to the judge's marshal, and he shall cause them to be rolled up and put in a box, and when causes are brought on, some indifferent person, in open court, to draw out twelve of the said papers of names, who not being challenged, shall be jury; but if any be challenged and set aside, or do not appear, then a further number to be drawn, till there is a full jury, &c. In trials of issues on indictments and all actions, the court may order a special jury to be struck, as on trials at bar. *Stat. 5 G. 2. c. 25.*

Persons having estates for 500 or 99 years, or other term determinable on lives, &c. of 20*l*. *per annum*, declared qualified to serve on juries; and sheriffs, &c. shall not impanel persons for capital offences, who would not be qualified in civil causes.

In *London* jurors to be housekeepers having lands or goods to the value of 100*l*.

Justices.

Leaseholders on leases, where the rent amounts to 50*l.* a year, liable to serve on juries in the county of *Middlesex*. Stat. 4 G.

2. c. 7.

The justices of assize for the counties palatine of, &c. on motion for the king, or any prosecutor or defendant, may appoint a jury to be struck for the issues, in like manner as special juries in the courts of *Westminster*, and the statutes of 3 G. 2. c. 25. and 4 G. 2. c. 7. for regulating of juries, are made perpetual.

Not to serve as a juror in *Middlesex* at any sessions, if returned at the two terms next before.

No person shall be returned to serve as a juror in the county of *Middlesex* at any sessions of *nisi prius*, who hath been returned at the two terms or vacations next before, on pain of the sheriff being fined by the judge 5*l.* or under. 4 G. 2. c. 7.

Inhabitants of *Westminster* not to serve in juries at the sessions for *Middlesex*.

And by the stat. 7 & 8 W. 3. the inhabitants of the city and liberty of *Westminster* shall be exempted from serving in any jury at the sessions for *Middlesex*, by reason of their attendance at the courts of *Westminster-hall*.

Justices of the peace.

The power of justices.

THAT all power of justices of the peace is derived to them two ways; by the commission of the peace, and by divers acts of parliament; resolved by all the judges *tempore Caroli regis in banco regis*.

They may hear and determine all offences, wherein the life of man is not concerned; but

but for all other matters they are only to inquire. *Ibid.*

They are not to take bail, but in cases where they can hear and determine. *Stat. 1 & 2 P. & M.*

Justices of the peace have no coercive power out of their county; and therefore, *Style 134.* that an order of *bastardy*, and such like, made by them out of their county, is void: but it is said, that recognizances and informations voluntarily taken before them, in any place, are good; but also it seems from the general words of their commission, that they may lawfully act within a liberty which has justices of its own, unless the commission of the peace for such liberty exclude them; and *quære* even in that case, whether the acts within a liberty be void, since they seem not to be bound to inform themselves of a commission which they have nothing to do with. *Hawk. P. C. c. 8. f. 29. p. 39.*

Justices of the peace in liberties are such, in cities and other corporate towns, as others are of the county, and their authority is all one within their several territories and precincts, having besides the assize of ale and beer, *&c. 27 H. c. 25.*

But if the king grants to a corporation, that the mayor and recorder, *&c.* shall be justices of the peace within the city, *&c.* if there be no words of exclusion, justices of the county have concurrent jurisdiction with them; and the king may, notwithstanding his charter, grant a commission of the peace, especially in that city or county. *Hale's hist. of the pleas of the crown 47.*

Also,

Also, where the justices of any corporate town deny right, justices of the peace of the county may inquire into it, as hath been lately adjudged. *Mod. cases* 164.

Justices of the peace in cities or towns corporate may commit persons apprehended within their liberties to the house of correction of the county, &c. which persons shall be liable to the like correction and punishment, as if committed there by any justice of the same county. *Stat. 15 G. 2. c. 4.*

Justices of cities and corporations are not within the qualification-act of 5 G. 2.

And now justices may, in case any person against whom a warrant shall be issued, shall escape out of the jurisdiction of the justice who shall grant a warrant, any justice where such person shall escape, upon proof made upon oath of the hand-writing of the justice granting such warrant, to indorse his name on such warrant, which shall be a sufficient authority to such persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant, and to carry such offender before the justice who indorsed such warrant; and in case the offence be bailable, to take bail in the same manner as the justice of the proper county, and deliver the recognizance, together with the examination or confession of the offender, to the constable, and other persons so apprehending such offender, and deliver the same to the clerk of assize or peace; and in case such offence shall not be bailable, or such offender shall not give bail for his appearance, then the constable to
carry

carry the offender before some justice of the proper county where such offence was committed. *Stat. 24 G. 2.*

If such constable, &c. refuse or neglect to deliver to such clerk of assize, &c. forfeits 10*l.* to be recovered by bill, &c. by any person who shall sue for the same; and no action shall be brought against the justice who indorsed such warrant, but against the person who granted such warrant. *Stat. ibid.*

Where a statute adds a new penalty to an offence prohibited also by common law, it is in the election of the prosecutor to proceed either at common law, or on the statute. *Hawk. P. C. c. 8. s. 47.*

All misdemeanors whatsoever that are *mala in se*, and of a publick nature, are against the king, though otherwise of a private nature, are indictable at common law. *Ibid. b. 2. c. 25.*

If a statute makes an offence without mentioning an indictment, enumerates several other ways of proceeding, as commitment, action of debt, information, &c. without adding *or otherwise*, it will not maintain an indictment. *Ibid.*

A bill of indictment cannot be found specially or conditionally, or for part, and not for the whole. *Ibid.*

In all accusations of felony, frauds, and other matters of consequence, the justice should take proper informations, signed by the accusers on oath, before he grants his warrant to apprehend the party; and in all penal statutes, to follow the letter of the statute; and if the statute requires a distress to be

In what crimes examinations are to be taken.

be made on the goods and chattels of the offender, the justice must keep as near as possible to the words of that statute; and before he inflicts the penalty prescribed, he must summon the party, and hear his or her defence before he convicts, and according to what shall appear, make his adjudication: and if the statute requires a distress to be made of the goods and chattels of the offender, the justice must keep as near as possible to the words of that statute in the warrant which he grants, reciting in the preamble of it, the substance of the information he has taken upon oath, and that the party was summoned, and did or did not appear.

A justice of the peace made an order for payment of a seaman's wages; in an action brought against him the plaintiff recovered 30*l.* damages. *Bycroft's case*, 5 *Mod.* 91.

If a justice of the peace live out of the county wherein he is a justice, he cannot by his warrant bring such person out of the county where he is. 13 *Ed.* 4. 8. *Plow.* 37. *Platt's case*.

A justice of the peace cannot discharge a person brought before him for suspicion of felony, in case a felony has been committed, but must either bail or commit him. *Hale's P. C.* part 2. p. 93.

The justice of the peace's commission.

The justice of
peace's com-
mission.]

GEORGE the second, by the grace of God,
&c. To our well-beloved and faithful,
&c. The commission is usually directed to
the lord chancellor, treasurer, and all privy
counsellors,

counsellors, who are justices of the peace in every county of *England*, as well as to the gentlemen of the proper county; which commission is as follows:

Know ye, that we have assigned you and every one of you, jointly and severally, our justices, to keep our peace in the county of, &c. and to keep and cause to be kept all ordinances and statutes made for the good of the peace, and for the conservation of the same, and for the quiet, rule and government of our people in all and every the articles thereof in our said county (as well within the liberties as without) according to the force, form and effect of the same, and to chastize and punish all persons offending against the form of those ordinances or statutes, or any of them, in the county aforesaid, as according to the form of those ordinances or statutes shall be fit to be done; and to cause to come before you or any of you, all those persons who shall threaten any of the people in their person, or in burning their houses, to find sufficient security for the peace, or for the good behaviour towards us and the people; and if they shall refuse to find such security, then to cause them to be kept in prison until they find such security. We have also assigned you and every two or more of you (whereof any of you the said *A. B. C.* shall be one) our justices, to inquire by the oath of good and lawful men of the county aforesaid, by whom the truth may be better known, of all and all manner of felonies, witchcrafts, inchantments, forceries, magick art, trespasses, forestallings, regratings, ingrossings

ingrossings and extortions whatsoever, and of all and singular other the misdeeds and offences of which justices of the peace may or ought lawfully to inquire, by whomsoever and howsoever done or perpetrated, or which hereafter shall happen howsoever to be done or attempted in the county aforesaid, and of those who in the county aforesaid have either gone or ridden, or hereafter shall presume to go or ride in companies with armed force, against the peace, to the disturbance of the people; and also of all those who in like manner have lain in wait to maim or kill our people; and also of all innholders, and of all and singular other persons who have offended or attempted, or hereafter shall presume to offend or attempt in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances or statutes, or any of them, in that behalf made, for the common good of *England* and the people thereof, in the county aforesaid. And also of all sheriffs, bailiffs, stewards, constables, gaolers, and other officers whatsoever, who in the execution of their offices about the premises, or any of them, have unlawfully demeaned themselves, or hereafter shall presume unlawfully to demean themselves, or have been or hereafter shall be careless, remiss or negligent in the county aforesaid; and of all and singular articles and circumstances, and all other things whatsoever, by whomsoever and howsoever done or perpetrated in the county aforesaid, or which hereafter shall happen howsoever to be done, or attempted in any wise, more fully concerning
the

the truth of the premisses, or any of them, and to inspect all indictments whatsoever so before you or any of you taken or to be taken, or made or taken before others late justices of the peace in the county aforesaid, and not as yet determined, and to make and continue the process thereupon against all and singular persons so indicted, or which hereafter shall happen to be indicted, until they be apprehended, render themselves, or be outlawed; and to hear and determine all and singular the felonies, witchcrafts, enchantments, forceries, magick arts, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premisses, according to the laws and statutes of *England*, as in like cases hath been used or ought to be done; and to chastize and punish the said persons offending, and every of them, for their offences, by fines, ransoms, amerciaments, forfeitures or otherwise, as ought and hath been used to be done, according to the laws and customs of *England*, or the form of the ordinances and statutes aforesaid.

Provided always, that if a case of difficulty upon the determination of any of the premisses, shall happen to arise before you or any two or more of you, then you or any two or more of you do not proceed to give judgment therein, except it be in the presence of one of the justices of one or other bench, or justices of assize in the county aforesaid.

And therefore we command you and every of you, that you diligently intend the keeping

ing of the peace, ordinances, statutes, and all and singular other the premisses, and at certain days and places, which you or any such two or more of you, as is aforesaid, shall in that behalf appoint, ye make inquiries upon the premisses, and hear and determine all and singular the premisses, and perform and fulfil the same in form aforesaid, doing therein that which to justice appertaineth, according to the law and custom of *England*, saving to us the amerciaments and other things to us thereof belonging.

And we command, by virtue of these presents, the sheriff of the said county of, &c. that at certain days and places which you or any such two or more of you, as aforesaid, shall make known to him as aforesaid, he cause to come before you or such two or more of you as aforesaid, such and as many good and lawful men of his bailiwick (as well within liberties as without) by whom the truth in the premisses may be the better known and inquired of.

Lastly, we have assigned you the said, &c. keeper of the rolls of the peace in the said county, and therefore you shall cause to be brought before yourself and your said fellows, at the said days and places, the writs, precepts, processes and indictments aforesaid, that the same may be inspected, and by a due course determined as aforesaid. In Witness whereof, &c.

Note; The commission of the peace directs that the sessions of the peace be *secundum legem & consuetudinem Angliæ*; and to this

this end some statutes require, that men learned in the law should be put into the commission, and the *custos rotulorum* being generally chosen out of the nobility, for the honour of the bench and greatness of his trust, is impowered, under his hand in writing or by word of mouth, to assign some outer barrister of one of the four inns of court, to give the charge and to declare the rules, to direct the orders, and to pronounce the judgments of the court, according to the laws and customs of the realm.

Justices of the peace had no other power at first, but only of keeping the peace; stat. 1 *Ed.* 3. was the first statute which created these justices, and gave them power to keep the peace; and the very next year the form of their commission was enlarged; so that they then had the statute of *Winchester* in charge, and were enabled to inquire of felonies and trespasses, and likewise to arrest felons that were indicted: then by 2 *Ed.* 3. the statute of *Northampton* was inserted in their commission, together with a direction to certify into the chancery the names of such as were indicted, because that they had not then power to award process at law. The statute of 34 *Ed.* 3. c. 1. was the first statute that gave authority to justices to hear and determine trespasses and felonies, with a further addition touching weights and measures, servants, artificers and labourers, and therein is the first clause for taking security of the peace.

Thus stood the form of the commission until *Richard* the second, in the thirteenth of

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whose

whose reign there was a commission to inquire of forestalling and regrators, and of victuallers, hostlers, labourers, &c.

The clause to whom the keeping of the records of the peace was first brought into the commission, was to *S. B.* of the county of *Kent*, which office is now called *custos rotulorum*: there were likewise several other statutes thrust into the commission of the peace, which were surcharged with vain recitals and repetitions of statutes, which were repealed, and other corruptions that had crept into it, partly by the ignorance of clerks, and other things, which caused a contradiction one with another; which being made known to the judges, they, after communication together in *Michaelmas* term 1590, the commission was then carefully refined, and presented to the lord chancellor as a pattern of a commission to be put into execution throughout the whole kingdom, and the same was sealed and sent abroad accordingly.

The latter clause (or *assignavimus*) of the commission comprehendeth the power given to the justices, as well for to inquire of all those offences that be contained therein, as to proceed, hear and determine upon any former (or future) indictments; so that always two of those justices at least be present thereat, and that one of those two be of that select number which is commonly termed of the *quorum*; for those of the *quorum* were wont (and not without just cause) to be chosen especially for their knowledge in the laws of the land; and this it was that led the makers of the statutes of 34 *Ed.* 3. and 13 *R.* 2. expressly

expressly to enact, that some learned in the laws should be put into the commission of the peace; and all statutes that desire the presence of the *quorum*, do secretly signify such learned man. *Lambard, c. 9. fo. 41.*

But these several statutes abovementioned, wherein it is said that one of those two shall be of the *quorum*, are repealed by the statute of 26 G. 2.

Justices of the peace to be resident in the county, and to keep their sessions four times in the year, *viz.* the first week after *Michaelmas*, *Epiphany*, *Easter*, and *St. Thomas* the martyr, called *Becket*, being the 7th of *July*.
2 H. 5. c. 4.

How justices
are to keep
their sessions.

No person capable of being a justice of the peace that hath not 100*l.* a year estate freehold or copyhold, to his own use in possession, on forfeiture of 100*l.* Attornies, &c. are incapable to be justices. *Stat. 5 G. 2. c. 18.*

The qualifi-
cation of ju-
stices.

Justices power determines by the death of the king, discharge under the great seal, &c.

No justice of the peace to act as such, unless he has an estate of 100*l.* a year, or is intitled to 300*l.* *per annum* in reversion; and shall take an oath to the truth thereof, and where the same lies, on the penalty of 100*l.* or of an estate for life or lives for 21 years in lands, clear of all incumbrances. 18 G. 2.

There are two kinds of sessions of the peace; the general sessions or quarter-sessions, for the general execution of the authority and commission of the peace, because they are kept quarterly, four times in the year; the special or private sessions is a sitting pro-

cured upon some special occasion, as for the inquiry of riots or forcible entry, placing out of servants, or the like. The weeks wherein the feasts happen must be ended, before the general sessions can begin, and thus it must be held throughout the whole kingdom; the justices were bound by their oaths to keep it this time, 33 *H. 8. c. 12.* But this clause is now omitted; it may be continued one or two or three days, or more, as occasion may be. 37 *H. 8. c. 7.*

What to be
given in
charge.

At the opening of the sessions all things are to be given in charge that do lie within the authority of the justices, to be determined.

Manner of
proceeding.

The manner and order of proceeding in the general or quarter sessions and in the special sessions, is for the most part all one, for their power by the commission is all alike in all offences by the common law.

Note; Freedom of access is incident to a court of record, as this is; so that if any person come voluntarily thither about any business of the sessions, as to prefer a bill of indictment, &c. or is compelled to appear to save the forfeiture of his recognizance, he shall be protected from arrests upon mesne process, and if he happen to be arrested, the court may discharge him upon examination of the matter on oath of the party himself. 1 *Lev. 159.* 1 *Mod. Rep. 66.*

Quarter-sessions a court
of record.

The general quarter-sessions of the peace is a court of record held every quarter of a year in every county, before two or more justices, one to be of the *quorum*, for the execution of their authority given them by a com-

commission of the peace and several acts of parliament: in some of the large counties the justices divide the shires into three or four parts, and keep four several sessions in each part. *Lambert, b. 4. c. 19, 20.*

The sessions may last two or three days, yet the record ought to mention that the sessions was holden on one certain day, *viz.* the first day.

The justice of the peace's oath concerning his office.

YOU shall swear that in the office of a Justice's oath: justice of peace in and for the county of *M.* in all and every the articles in his majesty's commission enjoined, and to you directed, you will do equal right to the rich and poor after your cunning, wit and power, and after the laws and customs of the realm and the statutes thereof made; you shall not be of counsel to any person in any quarrel depending before you; you shall hold your sessions according to the directions of the statutes in that case made, and the issues, fines and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, you shall cause to be entered without concealment or imbezilling, and truly send an account of them to the king's exchequer; you shall not spare any one for gift or other cause, nor take any thing for your office of justice of the peace to be done, but the fees and allowances accustomed and fixed by acts of parliament; you shall not direct any warrant by you to be made to the parties

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them-

themselves, but to the bailiffs and constables, &c. of the said county, or other the king's officers or indifferent persons, to execute the same; and in all things you shall well and truly do and execute the office of a justice of the peace,

So help you God.

Orders for justices, &c. in London and Middlesex.

Orders and directions to be observed by the justices of the peace, gaolers and others, at the sessions in *Old Bailey* for *London* and *Middlesex*, and made the 16th of *Car. 2.* by *Sir Robert Hyde* chief justice of the king's bench, *Sir Orlando Bridgman* chief justice of the common pleas, *Sir Thomas Twisden* one of the judges of the king's bench, *Sir Thomas Tyrrell* one of the judges of the common pleas, and *Sir John Keyling* one of the judges of the king's bench, and signed by them all, and read in open court, and ordered to be filed by the clerk, that all justices might take copies by them, if they please, that they shall not for the future pretend ignorance of their duty.

Recognizances to be certified the first day of sessions.

That all recognizances and bailments taken by any justice of the peace be certified into court the first day of every sessions before noon, for that they being kept longer out, it often happens, that felons and other offenders escape; the prosecutors, witnesses and parties being wearied out with delays and attendance, beside many other great mischiefs; and that justices of the peace who are faulty herein, be fined by the justices of gaol-delivery, according to the statute of 1 & 2 P. & M. c. 13.

If the offenders appear not upon their recognizances the first day, the default to be recorded and the recognizance to be forfeited, nevertheless process or warrants, as the case shall require, to go out against them and their bail; so likewise as to those who are bound to give in evidence, that if possible the business be not deferred to another sessions; in which time commonly the prosecutors and witnesses are taken off and the matters compounded.

That all justices of the peace do take examinations both of the felons without oath, and the informers and witnesses against them upon oath, before they commit the offenders to gaol, and certify the same the first day of the sessions, that they may be ready upon the trial of the felons, or else to be fined, according to the statute of *Philip and Mary* abovementioned.

That all prisoners for treason and felony be according to law sent to the common gaol, which is *Newgate*, and not to *New Prison*, it being found by experience, that they are often set at liberty there without trial.

That no prisoner for felony be discharged during the interval of sessions, unless it be upon good bail taken, the warrant or *mittimus* to the gaoler to keep them until they are delivered according to law, nor any bail or recognizance for appearance to be given up or withdrawn by the justices of the peace after the same is taken, but be returned and certified to the sessions or gaol-delivery; the offender, whether justice of the peace or gaoler, to be severely proceeded against.

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If any justice of the peace shall take bail where he ought not, or wittingly or willingly take insufficient bail, and the party appear not, the said justice not only to be proceeded against according to law, but likewise to be complained of to the lord chancellor, that he may be turned out of his commission.

That no copies of any indictment for felony be given with special order upon motion made in open court at the general gaol-delivery, for late frequency of actions against prosecutors (which cannot be without copies of the indictments) deterreth people from prosecuting for the king upon just occasions.

That gaolers make more perfect calendars than of late they have done, according to the statute of *H. 7. c. 3.* and insert not only persons in their custody, but also such as have been in their custody since the last session, and bailed or delivered out, and by whom.

That if any *habeas corpus* come to receive a prisoner from another gaol, the gaoler to take notice of the offence for which he stood committed at the other gaol, and to inform the court, that if he shall happen to be acquitted, or have his clergy, he may be remanded to the former gaol, if there be cause.

If any *habeas corpus* come to the gaolers to remove a prisoner, that with the prisoner they also shall certify the cause for which he stood there committed, it being found by experience, that by colour of a *habeas corpus* to receive and remove prisoners, many notorious offenders do escape.

That

That no prisoner convicted for felony for which he cannot have clergy (unless it be women) in such cases, where if they had been men, they might have had clergy, be reprieved, but in open sessions, and not otherwise, without the king's express warrant, and not by order of any the justices of gaol-delivery or oyer and terminer.

That such prisoners as are reprieved with intent to be transported, be not sent away as perpetual slaves, but upon indentures between them and particular masters, to serve in our *English* plantations for seven years, and the three last years thereof to have wages, that they may have stock when their time is expired; and that an account be given thereof, and by whom they are sent, and of their arrivals; for that it hath frequently happened of late, that some have been killed in duels, others upon sudden quarrels in the streets, and the inhabitants neglecting to apprehend the murderers, or make hue and cry after them, and so the persons not only escape, but no direct knowledge can be given who they are; and by the law, if any man be slain in the day, and the felon not taken, the township ought to be amerced; that therefore when any such case appeareth at *Newgate*, as it often doth upon the acquittal of persons apprehended upon suspicion, that both the coroner, as also the secondaries at *Newgate*, be required to attend the judges of the king's bench, that informations may be put in that court against the township for the escape, and followed *pro rege*, and at the next sessions at *Newgate* give

give an account what is done. *Keil. Rep. fo. 2.*

Justices of the peace's power at the sessions of the peace.

A man may be indicted there for any felony, for any trespass, or wrong done by fraud or force, for any offence against a statute law, the consufance whereof is referred to the justices of the peace; and therefore upon any offence against an article of the charge, as for extortion, escape, rescous of persons and goods, unlawful distresses, with-holding of treasure trove from the king, from conveying away of men from the justice of the law, from hiding and keeping away an apprentice from his master, &c.

An indictment may be brought at any time for an offence done against common law, but for an offence done against a statute, it must be brought within the time prescribed by the statute.

All actions, indictments and informations, where the forfeiture is given to the king alone, shall be brought within two years after the offence; but where the forfeiture is given to the king and another, there it must be brought within a year after the offence done, or in default of that, for the king within two years. *Stat. 31 Eliz. cap. 5.*

And indictments, presentments, &c. must be said to be done in a place certain from whence the venue must come, and must be there

there brought and preferred where the offence was done. *Stat. 1 R. 3. Co. 6 Rep. 14.*

If it be upon a penal law it must be laid to be done in a place certain, where in truth it was done, else the defendant shall not be found guilty.

So if one be stricken in one county, and die of the stroke in another county, he may be indicted in the county where the death is. *Stat. 2 & 3 Ed. 6. Lambert 43.*

And the two counties, unless *London* be one of them, may join in this case. *Brook in Dyer 45, 31, 26.*

If a felony be done in one county, and a man be accessory thereto in another county, the indictment against the accessory may be good in the county where he became accessory. *Lambert 9. p. 403.*

If one be robbed on the highway in *Middlesex*, and the thief is apprehended (having the goods about him) in *Essex*, he may be indicted for this felony in *Essex*, but not for the robbery there; for it is no robbery but in that county, but it is felony wherever he hath the goods. See **Information**, p. 214.

An indictment cannot be good for taking of things *feræ naturæ*, nor for breach of a recognizance; the remedy upon the forfeiture is by *scire facias* out of the exchequer, and not by indictment. See the stat. 5 & 6 Ed. 6. c. 25. 4 *Inst.* 181.

The act of the 5th of *G. 1.* does not incapacitate any peer or lord of parliament, or the son and heir of any peer, or any person qualified to serve as knight of the shire, nor exclude the officers of the board of green-cloth

What persons are qualified for justices, notwithstanding the statute.

cloth within the verge of his majesty's palace, nor the commissioners of the navy, or the two under secretaries of state.

How justices
are created.

Besides the several qualifications mentioned above, he must be impowered by commission from his majesty under the great seal; and he, by the stat. 1 G. 2. c. 13. must immediately after divine service and sermon, upon some Lord's day within three months after receiving his authority, in some parish church receive the sacrament of the Lord's supper, according to the usage of the church of *England*, and before he takes the oath, according to the stat. 25 Car. 2. c. 2. shall in court deliver a certificate of receiving the sacrament under the hands of the minister and churchwardens, and shall make oath of the truth thereof by two credible witnesses at the least, and at the time of taking the said oath he shall make and subscribe the declaration in the said statute of 25 Car. 2. and then the oaths in the said statute of 1 G. 1. appointed to be taken.

The forfeiture of every justice who shall act without taking the oath is 100 l. one moiety to the poor, and the other to the informer; the proof of the qualification to lie on the justice.

Justices of the peace as are created by the king's commission, are made of course by commission under the great seal of *Great Britain*, and nominated and appointed by the discretion of the lord chancellor or lord keeper. In *Lancashire* they are made under the seal of the dutchy by the statute of 27 H. 8. c. 24.

By

By the statute of 12 R. 2. c. 10. justices of the peace should have 4s. a day, and the clerk of the peace 2s. every day they sat in quarter-sessions, to be paid by the sheriff, who was to be allowed it in passing his accounts; and if he neglected or refused to pay, an action of debt would lie against him.

And by the statute of labourers, 5 Eliz. c. 4. they are to have 5s. a day every day they sit in execution of the act above three days.

A justice of the peace was fined 200*l.* for giving a challenge. *Black.* 43, 44.

A justice of the peace sent a servant to the house of correction on complaint of a master, for that he was saucy and gave his horses too much corn; and this being held not to be a sufficient cause, an information was filed against him by leave of the court. *Pasc.* 1722. *The king* against *Okey*.

A justice of the peace was punished for conspiring to indict a stranger at the sessions, otherwise for a thing done by him as a judge. *Cro.* 122. See the *Justice's oath*, p. 245.

After the 24th of June 1751, no writ is to be sued out against, nor any copy of a process is to be served on any justice of the peace, at the suit of a subject, for any thing done in the execution of his office, till after notice in writing of such intention has been delivered him, or left at his usual place of abode by the attorney or agent of the party who intends to sue the same, to be sued out or served at least one calendar month before the serving the same; and in which notice must be implicitly contained the cause of action

How actions are to be brought against him.

action which the party claimeth against such justice, and upon the back of such notice the name and place of abode of the attorney or agent, who is to have no more than 20 s. for the preparing and serving such notice; and such justice at any time within one calendar month after such notice, may tender amends to the party complaining or to his attorney, and if not accepted, to plead such tender in bar to any action grounded on such writ, together with the plea of not guilty, and any other plea, with leave of the court; and in case the jury find the amends so tendered sufficient, they must give a verdict for the defendant; and in case the plaintiff shall be nonsuit, or shall discontinue his action, or in case judgment shall be given for such defendant upon demurrer, such justice is to be intitled to the like cost as he would have been, in case he had pleaded the general issue only: but if the jury does find that no amends were tendered, or that the same was not sufficient, and also against the defendant in such other plea or pleas, then they must give a verdict for the plaintiff, with such damages as they think proper.

But no plaintiff is to recover any verdict, unless it is proved upon the trial that such notice was given as aforesaid; but in default thereof the justice is to recover a verdict and cost of suit.

But if such justice neglect to tender amends, or shall have tendered insufficient amends, before the action brought, he may by leave of the court where the action is depending, at any time before issue joined, pay into
court

court such a sum of money as he shall see fit; whereupon such proceedings, orders and judgment shall be had, made and given, in and by such court, as in other actions where the defendant is allowed to pay money into court.

No evidence must be given on the trial of any cause of action, except such as was contained in the notice.

Justices are not to execute their office as a justice in his own case, unless he is assaulted, and then he may commit the offender; he may likewise record a forcible entry upon his own possession.

The justice is not to be punished for any thing done by him in sessions as a judge.

To call a justice of the peace buffleheaded fellow, or to say he doth not understand law, is indictable. *Comb. 65.*

And as justices of the peace are favoured in the law in the execution of their office, so are they punished for any misdemeanor. *Sid. 192.*

A justice of the peace may be indicted for taking money in the execution of his office, or any corrupt practices by colour thereof. *Sav. Rep. 134. 1 Keb. 727. Sir Purbeck Temple's case. Raym. 12. Cro. Eliz. 326. 1 Keb. 3, 13, 16.* May be indicted for taking money.

In cases of difficulty it is proper for justices to execute their office in a special sessions, because if they should err or be mistaken in their judgment upon any commitment or other proceeding in such sessions, no action will lie against them for it.

Making

Making orders in their chamber after adjournment of the sessions, is not justifiable, but punishable. *Pidgeon's case*, 1 Cro. 341, 350.

If any justice, without lawful cause, doth not assemble at the *Easter* quarter-sessions to rate the wages of servants, he forfeits 10 l. to the king, by 2 & 3 P. & M. c. 3.

The qualification oath.

Qualification
oath.

I T. P. do swear, that I truly and *bona fide* have such an estate in law or equity to and for my own use and benefit, consisting of (here set forth the nature of such estate, whether messuages, lands, rents, tithe, office, benefice, or whatever else) as doth qualify him to act as a justice of the peace for the county, riding or division of according to the true intent and meaning of an act of parliament made in the eighteenth year of the reign of his majesty king George the second, intituled, *An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign*, intituled, *An act for the further qualification of justices of the peace*; and that the same (except where it consists of an office, benefice or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names) is lying and being, or issuing out of lands, tenements or hereditaments, being within the parish, township or precinct of or in the several parishes, townships or precincts of in

in the county of _____ or in the several
counties of _____ as the case may be.

Which oath shall be kept by the clerk of the peace.

The proof of the qualification to lie on the justice.

If a justice of the peace refuses to examine a person robbed on request, an action will lie against him on the stat. 23 *Eliz.* for the justice in this case does not act as a judge of record. *Lev. Rep.* 323.

Authority given to justices of the peace must exactly be pursued, and so it ought to appear in their orders and determinations. 2 *Salk.* 473. 5 *Mod.* 321.

Justices of the peace have no jurisdiction upon the statute of usury, nor forgery. 2 *Salk.* 406.

Perjury is indictable before the justices of the peace by the stat. 5 *Eliz.*

In some cases justice of the peace is not a judicial officer, but only ministerial; as upon a *supplicavit* out of chancery or king's bench, or upon a *certiorari* to certify any recognition, indictments, or other records.

In regard to fees or perquisites of justices the best rule is, to observe strictly the oath of office. See p. 245. No fees to justices.

A justice of the peace cannot take a prisoner out of the marshal's custody for a criminal offence; in such case the justice should charge the prisoner with such crime, and at the assizes or sessions bring him up by *habeas corpus*. *Hil.* 2 *G.* 2. in *B. R.*

S

Easter

Easter sessions, by the stat. 33 H. 8. c. 10. is to be held the *Tuesday* next after *Low Sunday*. *Lambert* 605.

Sessions of
peace ground-
ed on 2d as-
signavimus of
the commis-
sion.

Having in the first place set forth the justice's commission, and the alterations that have from time to time been made thereto; therefore it will appear that the sessions of the peace is grounded chiefly upon the words of the second *assignavimus* in the commission, as thus, We have assigned you, and every two or more of you, whereof any of you the said *A. B. C.* shall be one, our justices, &c. which do necessarily require the presence of one of the *quorum*. See stat. 26 G. 2. relating to the *quorum*. And these three things, *viz.* inquire, hear, and determine, do (in effect) comprehend whatsoever belongeth to the sessions.

Commission
divided into
three parts.

The commission is therefore divided into three parts; the salutation of the king, the power of the justices, the charge given to them and to others.

The salutation of the king is but a catalogue of all the names of the justices.

Next followeth the power of the justices, contained in the two several clauses of the said commission, whereof the first begins thus, Know ye, that we have assigned you jointly and severally our justices, to keep our peace in the county of *C.*

The latter beginneth at the end of the former, thus, We have assigned you and every two or more of you (whereof any of you the said *A. B. C.* shall be one).

The restraint in matters of doubt.

And here it is to be observed, that lest those justices should ground their judgments upon the number of voices, this latter clause is a provision and restraint, that in all cases of ambiguity and doubt they shall spare to proceed to judgment, and shall expect the presence either of some one of the judges of the king's bench, or of the common pleas, or at the least of one of the justices of assize in that county. And yet Mr. Fitz. *fo. 7.* well noteth, is not their judgment void, if they will proceed without such advice? but it standeth good and effectual, until it shall be reversed by writ of error.

The commandment and charge that is given to them and others.

First, these justices and every of them be charged to be diligently intendant about the execution of all and singular the premisses by these words, And therefore we command you and every of you; in the end whereof there lieth a plain saving to the king of all such amerciements and other things, as shall grow due unto him by their service in this commission.

Then is the sheriff of the county commanded to be attendant upon those justices for the return of juries, to be made before them, by these words, We command; by virtue of these presents, the sheriff of the said

county of C. and, Lastly, we have assigned you the said keeper of the rolls of the peace in the said county.

The description of a sessions of the peace.

Description of
a sessions.

It is an assembly of any two or more justices of the peace (one of them being of the *quorum*) at a certain day (and place within the limits of their commission) appointed to inquire by a jury (or otherwise to take knowledge) and thereupon proceed to hear and determine according to the power of their commission, and the statutes referred to their charge.

That two justices of the peace (one of them being of the *quorum*) may hold a sessions of the peace, doth plainly appear by the commission; (see p. 236.) *Lambard, fo. 42, 365, 369.* The *quorum* repealed.

A justice of the peace convicted of extortion was fined a thousand marks, committed during the king's pleasure, bound to his good behaviour for a year, and ordered to acknowledge his offence publicly at the next assizes, and turned out of the commission. 1 *Hawk. c. 68.* and 2 *Hawk. c. 25. s. 69.* 3 *Inst. 147, 148, 149.*

A justice of the peace may not bind to the good behaviour, nor commit to prison, for refusal to give security upon a general accusation, without some particulars. *Pasc. 23 Car. 2. B. R.*

If

If he who is bound to the peace break his recognizance, he may be indicted, for it is a new offence. *Style* 369.

Justices of the peace have jurisdiction within the verge for felonies arising there. *4 Co. Rep.* 46. *Wrote* and *Wigg's* case.

The causes why justices are sworn.

They ought to take heed (as *Jehosaphat* said) what they do, for they judge not for man only, but for God, who is present with them in judgment. *2 Book of Chronicles*, c. 19. Therefore it hath been the policy of christian laws to appoint certain forms of oaths for officers to take, meaning thereby not only to set God before their eyes (whom by such oath they call to witness of their promise) and call for revenge of their falsehood, but also to threaten them with temporal pains provided against corrupt dealings, and withal to strengthen their minds and arm their courage against the force of human affections, which otherwise might allure and draw them out of the way.

Upon this ground the statute of *R. 2. c. 13.* was made, which willed that justices of the peace should be made throughout all the counties of *England*.

Fees of the sessions.

Chief justice *Holt* said, the sessions cannot commit for non-payment of fees; for if there is a right there must be a remedy; an *indebitatus assumpsit* will lie if the fee is certain, if uncertain, then a *quantum meruit* will lie. *Ld. Raym.* 705.

A justice may take money to lie in deposit as a security of the peace, and if the party break the peace, the money is forfeited to the king. *1 Cro.* 446.

Justices clerks fees.

By the stat. 26 G. 2. for settling and ascertaining the fees to be taken by clerks to the justices, the table of fees therein required to be made and approved by the justices, was to be laid before the judges at the next assizes, to be ratified and confirmed by them; but no sufficient provision was therein for confirming the table of fees made for the county of *Middlesex*, wherefore it is enacted, that after the 24th of *June* 1754 the table of fees to be taken by the clerks to the justices for the county of *Middlesex*, which is or shall be made, shall be laid before the lord chief justice of the king's bench, lord chief justice of the common pleas, and the lord chief baron of the exchequer, or any two of them, who are to ratify and confirm the same with such alterations, additions or abatements, as they shall think reasonable. *Stat.* 27 G. 2.

A table

A table of fees to be taken by the clerks to his majesty's justices of the peace for the county of Middlesex, made, settled, approved, ratified and confirmed pursuant to the statutes in such case made and provided.

	s.	d.	
F OR a common warrant for assault, wounding, felony, or search for stolen goods,	1	0	Justices clerks fees.
A certificate for inlisting a soldier,	1	0	
For backing every warrant to be executed in the county or liberty,	1	0	
For every recognizance to answer for any misdemeanor,	2	4	
For a discharge of every person taken by the parish officers on privy search or watch, if any misdemeanor appears,	1	0	
For the discharge of every person brought by warrant for a misdemeanor,	1	0	
For a warrant to discharge any person out of gaol,	1	0	
For every <i>superseas</i> , if required, where persons have given in bail,	2	0	
For every examination taken in writing before one or more justices, in order to a settlement or vagrant pass,	2	0	
For every vagrant pass,	2	0	
For every settlement pass, or order of removal to last place of settlement signed by two justices,	2	0	

For every copy thereof for overseers of the poor,	s. d. 1 0
Allowing a certificate acknowledging a poor man to be legally settled, and oath,	1 0
For any orders concerning relief of the poor, summons to churchwardens or overseers for refusing to relieve the poor,	
An appointment by justices of lifts of overseers of the poor, of the scavengers or surveyors of the high- ways,	2 0
For every copy thereof,	1 0
For the warrant for the nomination or return of the surveyors of the high- ways,	2 0
For every copy thereof,	1 0
For confirmation by two or more ju- stices of poors rate, scavengers, sur- veyors of the highways, vagrant or bridge rates, whether such rates be contained in one or more books,	2 0
For every summons in writing by any justice, for any warrant of distress on poors rates, and the like on other rates, or penal statutes, or commit- ment thereupon against a single per- son,	1 0
For every summons before granting a warrant, unless the poors rate,	1 0
For every summons or warrant of di- stress, with long list of names,	2 6

For

	s.	d.
For every examination on oath of any woman with child of a bastard or bastards, and the affidavit thereon,	2	0
For warrant against reputed father of a bastard,	1	0
For the adjudication of bastardy,	3	0
For copy of the adjudication to be served on a reputed father,	2	0
For signing by two justices each pair of indentures of apprenticeship of children put out by the parish, for each justice's hand,	0	6
For taking, transcribing and returning every recognizance for alehouse-keepers, inn-keepers or victuallers licences, and for the licence, over and above 1 s. for the king's duty, 1 s. for the clerk of the peace, and 1 s. for the crier for delivering them at their respective houses,	2	6
For attending sessions on every appeal, when the attendance is necessary and required,	3	4
For drawing every information on penal statutes,	1	0
For every conviction on any penal statute,		
For every commitment to any of the gaols, for examination of felons, recognizances to prosecute, information against felons, and attending at the <i>Old Bailey</i> to prove them,		

For

	s.	d.
For drawing every affidavit, in any case where the party desires it, and where the justices of the peace have legal power to administer an oath, other than in cases of trespasses and assaults,	1	0
For summons or warrants against persons disaffected, against persons profaning the Lord's day, cursing or swearing, and certificate thereof,	1	0
For making certificates for constables allowances for passing vagrants,	1	0
For every order from the justices upon the surveyors of the highways to amend any part of the roads,	2	0
For every conviction for swearing according to the statute,	1	0
For clerks drawing certificates upon the removal or death of a licensed person, for the person proposed to succeed,	1	6
Upon justices signing such certificate,	1	0
For swearing every constable or headborough,	1	0

J. A. WALLER,
Clerk of the peace for Middlesex.

Keepers of prisons. See Gaolers.
Labourers. See Servants.

Licence.

Licence.

Justice of the peace's licence for using a boat on a Sunday.

PERMIT the bearer Mr. J. L. and his company, to pass and repass on the river *Thames* on *Sunday* next, on their lawful occasions without any hindrance or molestation whatsoever, as you shall answer it at your peril. Given under my hand and seal this day of 1751.

R. C.

To the rulers of the watermen's company, constables, churchwardens and others whom these may concern.

Persons using or travelling on the Lord's day with a boat, wherry, &c. except allowed by a justice, &c. forfeit 5 s. to the poor, to be levied by distress and sale; if not able to pay, to sit in the stocks two hours. *Stat. 3 Car. 1. c. 1.*

Licence to keep an alehouse. See p. 14.

Marriage.

Marriage.

The signifi-
cation of mar-
riage.

MARRIAGE signifies the lawful conjunction of man and woman in a constant society and agreement of living together, till the contract is dissolved by death or breach of faith, or some notorious misbehaviour destructive to the ends for which it was intended; and mutual consent between the parties, it is said, makes the marriage before consummation.

Marriage was instituted in a state of innocence for the preservation thereof, and is one of the rights of human nature; and as to the solemnization of marriage, this is a civil right, regulated by the laws and customs of the kingdom or country where we reside; and every state allows such privileges to the parties as it deems expedient, and denies legal advantages to those who refuse to solemnize their marriage in the manner it requires. *Moqr 170.*

By the stat. 26 G. 2. c. 3. if any person shall solemnize matrimony in any other place than a church or publick chapel (unless by special licence from the archbishop of *Canterbury*) or without publication of bans or licence in a church or chapel, he shall (on prosecution in three years) be adjudged guilty of felony, and transported for fourteen years, and the marriage shall be void: but not to extend to *Scotland*, nor to the marriages of *Quakers* or *Jews*.

If

If any person shall knowingly and wilfully insert, or cause to be inserted in the register-book, any false entry of any matter or thing relating to any marriage, or falsely make, alter, forge or counterfeit any such entry in the register, or any marriage licence, or cause the same to be done, or assent thereunto, or utter as true any such falsified register, or copy thereof, or any such forged licence, he shall be guilty of felony without the benefit of the clergy.

Manslaughter. See Coroner.

Mariners. See Servants.

Miller.

THE toll of a mill shall be taken according to the custom and according to the strength of the water-course, to the 20th or 24th of corn; and toll shall be taken by the rase, and not by the heap; and in case the farmers find the millers their necessities, they shall take nothing besides their due toll; and if they do otherwise, they shall be grievously punished. 3 Ed. 1. c. 30.

A miller ought to take but one quart for grinding of one bushel of hard corn; but if he fetch it, and carry back the grist to the owner, he may take two quarts of hard corn; and hard corn is intended of wheat, rye, meslin; and for malt the miller shall take but half

Overseers.

half so much toll as he taketh for hard corn; that is, one pint in the bushel; but if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller shall have double toll. *Dalt.* 112.

Wisdemeanor. See **Felony**, **Treason**.

Murder. See **Coroner**.

Misadventures. See **Highways**.

Overseers of the poor.

Overseers, after others are appointed, to deliver a true account sign'd.

OVERSEERS of the poor are usually nominated in *Easter* week, or within a month afterwards; and they are, within fourteen days after other overseers shall be appointed to succeed them, to deliver to the succeeding overseers a true account signed by them of all sums received, or rated and not received, and of all goods, &c. in their hands, and pay and deliver over the same; the account to be verified on oath before a justice. Parishioners paying 6*d.* may inspect the account; and paying for every 300 words 6*d.* may have copies. Succeeding overseers to levy all arrears, and thereout reimburse their predecessors.

Persons occupying any house out of which another has removed, or which at the time of making the rate was empty, the person removing

removing and the person occupying shall pay in proportion to the time they respectively occupied, to be ascertained by two justices, in case of a dispute. Rates may be levied in any other county into which a parishioner shall remove. *Stat. 17 G. 2. c. 38.*

When the overseers books are passed, it is usual for the two justices to signify it writ in their books at the foot of their accounts.

And if money be due to the old overseers, you write thus;

	l. s. d.
Due to be paid from the new to the old overseers,	} 30 9 6

October 11, 1754. Perused and allowed by us R. C. and J. H. two of his majesty's justices of the peace for the said county, whereof one is of the *quorum*.

But now the word *quorum* may be omitted. See the statute of 26 G. 2.

And if money be due to the new overseers, then say,

	l. s. d.
Remaining in the old overseers hands, to be paid to the new ones,	} 20 10 10

October 10, 1754. Perused and allowed by us R. C. and J. H. two of his majesty's justices of the peace for the said county.

Churchwardens or overseers refusing to account, to be committed.

If the churchwardens or overseers refuse to account, then two justices of the peace may commit the person so refusing to the county gaol, there to remain without bail: but this must first be levied by warrant of distress, and in default of distress, then he must be committed by warrant by two justices. Or they may be indicted at sessions upon the stat. 43 Eliz. 5 Mod. 179. Or they may be indicted for not collecting a tax. 3 Keb. 49.

Upon a motion for a *mandamus* to the new churchwardens and overseers of the poor to make a rate to reimburse the old ones the several sums by them expended, it was denied, it having already been resolved in *Tawney's case*, 2 Salk. 531. and 6 Mod. 97. that a *mandamus* cannot be granted to the new overseers to make a rate to raise money to reimburse the old overseers, but only to raise money for the relief of the poor; for so is the act expressly, and so must be pursued: and an overseer is not bound to lay out money till he hath it; if he doth, he must make a new rate for the relief of the poor, out of which he may retain so much as will pay himself. *The king against The churchwardens of Rotherhithe in Surry*, Hil. 11 G. 1.

King's bench will compel justices to sign poor's rate.

The court of king's bench upon motion will compel the justices to sign the poor's rate, unless they shew cause to the contrary. *The case of the inhabitants of Peterborough*, 1 Sid. 371.

The churchwarden of *Hadly* was committed by the next justice, as churchwarden, without bail, for refusing to account for money received and disbursed by him, &c. Upon an *habeas corpus* he was discharged; for the justices

justices in their *mittimus* ought to have set it forth, that he was overseer of the poor; and the justices have no power over him *quatenus* a churchwarden, but *quatenus* overseer. 1 *Keb.* 574. *The king against Peck.*

An overseer was indicted for not making up his account; *Holt* chief justice said, here the justices are to commit until the party do account, and not until delivered by due course of law; for if so committed, we shall discharge him upon a *habeas corpus*. *Cumberbatch* 374.

An indictment will lie against overseers of the poor for refusing to account within four days after the end of their year; although it was objected that this indictment would not lie, because this was an offence created by parliament, and the punishment directed that the offender should be committed by two justices, that remedy must be pursued; but the not accounting was a contempt of the law, for which an indictment will lie. 5 *Mod.* 179.

An indictment will lie against overseers for refusing to account.

Warrant to appoint overseers of the poor.

Middlesex, } **W**E whose names are here-
to wit, } unto subscribed, being
justices of the peace for the said county, do
appoint *J. P.* and *J. O.* of *H.* in the said coun-
ty, to be overseers of the poor of the parish of
H. for and during the space of one whole year
next ensuing the date hereof, according to
the form of the statute in that case made and
provided. Given under our hands and seals
this day of *N.* 1751.

T

Another

Another form of a warrant to appoint overseers of the poor, pursuant to the several statutes for the relief of the poor, wherein the duty of their office is set forth at large.

To A. B. and C. D. substantial householders of the parish of E. in the said county.

Warrant to
appoint over-
seers, with
their duty.

Quorum re-
pealed.

Middlesex, } **B**Y virtue of the several sta-
to wit, } tutes in that case made and
provided, we whose hands and seals are here-
unto set, his majesty's justices of the peace
(whereof one is of the *quorum*) of and for the
said county, dwelling in or near the said pa-
rish of E. do hereby nominate and appoint
you overseers of the poor of the said parish
for one year next ensuing the date hereof, or
until other overseers are appointed in your
stead; and do hereby require you forthwith
to take upon you the execution of the said
office; and for that purpose you, together
with the churchwardens, upon the *Sunday* af-
ternoon, are to confer together, consider of
and take order (with consent of the justices)
for setting to work the children of all such
within your said parish, as shall not be thought
able to keep and maintain them; and also for
setting to work all such persons, married or
unmarried, having no means to maintain
themselves, and using no trade to get their
living by; and also for raising of a conve-
nient stock of hemp, flax, wool, thread, iron
and other stuffs for those purposes; and also
for

for providing of necessary relief for such persons as are lame, old, blind, poor or unable to work, within your said parish; and for the placing out as apprentices all such children within your said parish as are fit to put forth, whose parents are not able to keep and maintain them. To which end you are to raise weekly or otherwise (by taxation of every inhabitant, parson and other, and of every occupier of houses, lands, tithes impropriate, coal mines or saleable underwoods within your said parish) such sums of money as shall be sufficient for those purposes, and shall be allowed of by us, or any two justices of this division dwelling in or near your said parish. *Stat. 43 Eliz. c. 2. and 13 & 14 Car. 2. c. 12.*

And for your better and more effectually executing the said office of overseer, we do hereby make known to you as follows, to wit.

That you, together with the churchwardens of your parish, with the consent of two justices of the peace of this division, may bind apprentices any such poor children as aforesaid; if a man child, until he attain his age of twenty-four years; and if a woman child, until she attain her age of twenty-one years, or time of her marriage: and the persons to whom they are bound are obliged to receive and provide for them, and to execute one part of the indentures whereby they are bound, under the penalty of forfeiting 10*l.* to the poor of your parish. And you, together with the churchwardens of your parish, by the leave of the lord of the manor, may build on any waste or common within

your parish, at the charges of your parish, houses for dwelling for the poor of your parish, and may place any such inmates in cottages used for the habitation of poor and impotent persons of your parish, by the stat. 43 *Eliz. c. 2.* and 8 & 9 *W. 3. c. 30.*

You, together with the churchwardens of your parish, with the consent of two justices, may set up a trade, only for setting on work and relief of your poor, by the stat. *Car. 1. c. 5.*

If any person coming to settle in your parish, and not being a parishioner thereof, shall deliver to, or leave at the house of your abode, or of any churchwarden of your parish, a notice of the house of such person's abode, and the number of his or her family, you are to cause the same to be read publickly immediately after divine service in your church on the next Lord's day, and to register such notice in the book kept for registering your poors account, otherwise you forfeit 40 *s.* by stat. 3 & 4 *W. & M. c. 11.* And by the statute you forfeit 5 *l.* if you refuse to receive any person that shall be removed from any other parish or place to your parish, by warrant under the hands and seals of two justices of the peace.

You are to take care that there be kept in your parish a book or books, wherein the names of persons of your parish who receive collection, pay or relief, shall be registered, with the day and year when they were admitted, and the occasion which brought them under that necessity; and yearly in *Easter* week (or as often as shall be thought convenient)

nient) your parishioners shall meet in vestry, before whom the book shall be produced; and all persons who shall receive collection or relief shall be called over, and the reason of their taking relief examined, and a new list made of such as they shall think fit to receive collection or relief, and no other person is to be allowed collection at the charge of your parish, but by order under the hand of some justice of the peace residing in or near your parish, or by order of quarter-sessions (except in cases of pestilential diseases, plague or small-pox, and for such families only as are infected; and also upon any sudden and emergent occasions); and if any such justice shall order relief for any poor person as aforesaid, you are to enter into the said books such person's name as one of those who is to receive collection, as long as the cause of such relief continues: and you are to pay no weekly or other payments, under pretence of extraordinaries, to any poor person whatsoever, whose name is not registered as aforesaid (unless by such order, or except as aforesaid). And if you charge any paid monies contrary hereto, you forfeit 5*l.* to the poor of your parish, by stat. 3 & 4 *W. & M.* c. 11. and 9 *G. 1.* c. 7. And in consequence thereof you are not to bring to the account of your parish any monies given to soldiers or sailors, although they have proper passes or certificates (for those are to be relieved by the treasurers of the respective counties thro' which they pass, by stat. 43 *Eliz.* c. 3. and not by the parish officers) nor any monies given to any other persons travelling with

passes or pretended passes, or to any persons begging for losses by fire, or on any other pretence whatsoever, under the said penalty of 5*l*. Every such person whose name shall be registered as aforesaid, together with his wife and children, cohabiting in the same house, such child only excepted as shall be by you permitted to live at home to attend the impotent parent, must wear upon the shoulder of the right sleeve of his or her uppermost garment, such badge as is herein after mentioned, that is to say, a large *Roman P.* with the first letter of the name of your parish cut in red or blue cloth; and if you relieve any such poor persons who shall not at all times wear such badge as aforesaid, you forfeit 20*s*. for every such offence. *Stat. 8 & 9 W. 3. c. 7.*

You and the churchwardens of your parish, with the consent of your parishioners or inhabitants in vestry, may purchase or hire a house or houses in your parish, and contract with persons for the lodging, maintaining and employing all such poor in your parish as shall desire relief; and if any person shall refuse to be lodged in such house, he or she shall be put out of the books, and not be intitled to relief. And with consent of one justice of the peace, your parish may join with any adjacent parish in purchasing or hiring a house for the purposes aforesaid; and you may contract with the churchwardens and overseers of any other parish for the lodging, maintaining or employing of any of your poor. *Stat. 9 G. 1. c. 7.*

On

On any poors coming to inhabit in your parish, not having a lawful settlement there, not bringing with them any certificate of their being settled elsewhere, not giving security for the discharge of your parish, you ought to make complaint thereof to some two justices of the peace of this division, in order to the examination and removal of such person to his or her last legal settlement.

You are to give, or cause to be given, publick notice in the church of every rate or assessment for the relief of your poor, allowed by the justices of the peace, on the next *Sunday* after the same shall have been so allowed, no such rate being valid or sufficient to collect and raise the same, unless such notice shall have been given: and you are to permit every inhabitant of the parish to inspect every rate at all seasonable times, and on demand give such inhabitant copies of the same, or any part thereof, paying at the rate of 6*d.* for every twenty-four names, otherwise you forfeit 20*l.* Stat. 17 G. 2.

You and the churchwardens of your parish are required, within four days after the end of your year, and after other overseers are nominated, to yield unto us, or some other two next justices of the peace, a just, true and perfect account, under the hands of you the said churchwardens, of all sums of money by you or them received, or rated and assessed and not received; and also all goods, chattels, stock and materials in your or their hands, or in the hands of any of the poor of your parish, in order to be wrought; and all

monies paid by you or the said churchwardens, and all other things concerning your said office. And you and the said churchwardens are further required, within fourteen days after other overseers shall be nominated to succeed you or them, to deliver to such succeeding overseers one other such account as aforesaid, fairly entered in a book or books to be kept for that purpose, signed by you and the said churchwardens; and also to pay and deliver over all sums of money, goods and chattels, and other things as shall be in your hands, unto such succeeding overseers, which account is to be verified by oath, or by the affirmation of people called quakers, before one or more justices of the peace; and if you and your said churchwardens shall refuse or neglect to do as before required, every person so refusing or neglecting is liable to be committed to the common gaol; which said book or books is to be from time to time carefully preserved by the churchwardens and overseers of the poor of your parish, in some publick or other place; and all persons assessed, or liable to be assessed, are to be permitted to inspect the same at all seasonable times, and to have copies thereof, paying for the same. *Stat. 43 Eliz. c. 2. and G. 2.*

The goods of any person assessed as aforesaid, and refusing to pay, may be levied by warrant of distress, not only in your parish, but in any other place in this division; and if sufficient distress cannot be found within this parish, on oath made thereof before some justice of any other county or precinct where such goods are (which oath is to be certified under

under the hand of such justice on the said warrant) such goods may be levied in such other county and precinct, by virtue of such warrant and certificate. *Stat. 17 G. 2.*

If any person shall refuse or neglect to pay any money that they shall be legally rated or assessed to, for the relief of your poor, any succeeding overseers may, and are required to levy such arrears, and therewith reimburse their predecessors. *Ibid.*

All persons occupying houses, lands or tenements for only part of a year, are to pay their proportionable share of the sums charged thereon, although such persons were not originally rated the proportions; if disputed, to be ascertained by any two or more justices of the peace. *Ibid.*

True and just copies of all rates and assessments made for the relief of the poor of your parish, are to be wrote and entered in a book or books provided for that purpose by you and the churchwardens of your parish, within fourteen days after all appeals from such rates are determined; and you and they are to attest the same by putting your names thereto; which book or books are to be by you and the said churchwardens carefully preserved in some publick or other place, whereto all persons assessed, or liable to be assessed, may freely resort, and are to be delivered over from time to time to all such succeeding churchwardens and overseers, as soon as they enter on their offices; and this you and they are not to omit, on pain of forfeiting a sum not exceeding 5*l.* nor less than 20*s.* *Ibid.*

And

And you are hereby also required, at some petty sessions or monthly meeting of his majesty's justices of the peace of this division to be holden for this county, in *Easter week* next ensuing the date hereof, or within one month afterwards, to deliver in unto the said justices, for their better information in appointing other overseers to succeed you, a list in writing of a competent number of the most sufficient householders of your parish as shall be made choice of at some publick meeting of your parishioners or inhabitants in the said *Easter week*, for that purpose.

And you the said churchwardens of your said parish are not to fail of your duties in the execution of the said office of overseer, as you will answer the same at your perils. Given under our hands and seals this
day of in the year of the
reign of our sovereign lord *George* the second,
by the grace of God of *Great Britain*, &c.
king, defender of the faith, and in the year
of our Lord 1753.

Oath. See Perjury.

Passes. See Vagrants.

Clerk

Clerk of the peace.

THE *custos rotulorum* to appoint the clerk of the peace, who may execute his office by deputy. *Stat. 37 H. 8. c. 1.*

Clerks of the peace and town-clerks to deliver to the sheriff, within twenty days after *Michaelmas* yearly, an estreat of all fines, &c. under the penalty of 50 *l.* Concealing any indictment, fine, &c. or miscertifying it, to forfeit treble the value and be disabled. *Stat. 22 & 23 Car. 2. c. 22.*

Clerks of the peace misdemeaning themselves, the justices of the peace in quarter-sessions to discharge them, and the *custos rotulorum* to appoint others resident in the county, or in default, the quarter-sessions to appoint one. No *custos rotulorum*, &c. to sell the place of clerk of the peace, on pain of forfeiting double the value of the sum given, and both disabled to enjoy their places. *Stat. 1 W. & M.*

Clerks of the peace, &c. not to take above 25. for drawing any bill of indictment against a person, under the penalty of 5 *l.* drawing defective bills to draw new ones *gratis*, under the like penalty. 10 & 11 W. & M. c. 23.

The clerk of the peace's oath. See *Stat. 1 W. 3. c. 21.*

Coal pits.

IF any person shall wilfully and maliciously set on fire any mine, pit or delph of coal or cannel coal, he shall be guilty of felony without the benefit of the clergy. *Stat. 10 G. 2. Stat. 24 G. 2. c. 2.* is continued to Sept. 1, 1757.

Perjury and subornation of perjury.

PERJURY is forbidden by the law of God, *Exod. xx. 13. Levit. xix. 11. Mat. v. 34.*

A false witness is called *perjurus, quia perperam jurat.*

Perjury, before the conquest was punished sometimes by death, sometimes by banishment, and sometimes by corporal punishment, &c. but too severe laws are never duly executed: afterwards it came to be more mild, to fine and ransom, and never to bear testimony. And it appeareth in the 7th of *H. 6.* that he that is perjured shall be fined and imprisoned.

The punishment of perjury in jurors for a false verdict was so severe at common law, as few or no juries were upon just cause convicted.

And

And this law doth yet remain in force; but a milder punishment is set down by the stat. 23 H. 8. wherein the party grieved hath election to ground his writ of attain upon this statute, or to take his remedy at common law. 3 Inst. 164.

An oath, what it is.

An oath is an affirmation or denial by any christian of any thing lawful and honest, before one or more that hath authority to give the same, for the advancement of truth and right, calling Almighty God to witness that his testimony is true. *Oath, what it is.*

An oath is so sacred, and so deeply concerneth the consciences of christian men, as the same cannot be ministred to any, unless the same be allowed by the common law, or by act of parliament be altered; but by act of parliament it is called a corporal oath, because he toucheth with his hand some part of the whole scripture. *Ibid.*

In every information or indictment for wilful and corrupt perjury it shall be sufficient to set forth the substance of the offence, and by what court, or before whom the oath was taken (averring such court or person to have a competent authority to administer the same) together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any of the records or proceedings, either in law or equity (other than as aforesaid) or the authority of the court or person before whom the perjury was committed. *Stat. 23 G. 2. c. 11.*

In informations or indictments for perjury the substance of the offence to be set forth.

No

No indictment lies before justices of the peace for perjury at the common law; but perjury, upon the stat. 5 *Eliz.* is indictable before the justices at sessions, because it is so appointed by the particular provision of that statute; but because the indictment and evidence to be given of perjury require a good deal of nicety, it is most adviseable to send those prosecutions to a superior court, and not to attempt the management of the trial at the sessions of the peace; besides there is less danger of a mistake in framing an indictment at common law.

Indictments upon the statute may be before justices of the peace, otherwise of those at the common law.

But now this method of proceeding in perjury is much altered, before which it was very difficult to convict a man of wilful and corrupt perjury.

Penalty.

Persons committing wilful perjury to forfeit 20*l.* suffer six months imprisonment, be disabled to give evidence, and to be set on the pillory, and to have both their ears nailed: suborning a witness to give testimony in any court of record concerning lands or goods, &c. to forfeit 40*l.* and to suffer the other punishments above. *Stat. 5 Eliz. c. 9.*

Quakers by their solemn affirmation or declaration corruptly affirming any matter or thing to be true, which is false, and would have been perjury in others, to incur the penalties of perjury. *Stat. 7 & 8 W. & M. c. 34.*

The court before whom any person shall be convicted of perjury, besides the punishment

ment already inflicted, may order the offender to be sent to the house of correction for seven years, or transported for the like term.

2 G. 2. c. 25.

Judges may direct prosecutions for perjury.

The judge of assize (sitting the court, or within twenty-four hours) may direct any witness, if there shall appear to him reasonable cause, to be prosecuted for perjury, and may assign the party injured, or other person undertaking such prosecution, counsel, who are to do their duty *gratis*; and such prosecution so directed shall be carried on without any duty or fees whatsoever; and the clerk of the assize, or other proper officer of the court, shall give *gratis* to the party injured or prosecutor, a certificate of the same being directed, together with the names of the counsel assigned him, which certificate shall be sufficient proof of such prosecution being directed; provided that no such direction or certificate shall be given in evidence on the trial. 23 G. 2. c. 11.

Cannot join several in one indictment of perjury. 2 *Strange's Rep.* 921.

There can be no perjury upon an affidavit made in a court that has no jurisdiction of the cause.

Subornation of perjury.

Subornation of perjury is, every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury in any matter or cause depending in suit and variance, by any writ, action, bill,

bill, complaint, or information touching any lands, tenements, &c. or any goods, chattels, debts or damages, in chancery or in any other court of record, leet, ancient demesne court, hundred court, court baron, or shall unlawfully and corruptly procure or suborn any witness which shall be sworn to testify *in perpetuam rei memoriam*, shall forfeit 40 *l.* half to the king, and half to the party; and if he has no lands or goods worth 40 *l.* to be imprisoned half a year, and stand in the pillory.

Poor. See Settlements.

Prison and Prisoners. See Gaolers.

Breaking of prison.

How to be understood.

IF a felon escape from gaol by the negligence of his keeper, and against his consent, it is felony in the prisoner for the breach of prison, and the gaoler is fineable. *Dalt.* 379. *Stamf.* 32, 34. If voluntary in the gaoler, it is felony in him.

If a prison be broken by a stranger, and not the prisoner, or by his procurement, this is no felony in the prisoner. *Hale's P. C.* 108. And therefore this extendeth as well to a prison in law as to a prison in deed.

Any place whatsoever, wherein a person is under a lawful arrest for a supposed crime, is restrained of his liberty, whether in the stocks or

or street, or in the common gaol, or the house of a constable or private person, is properly a prison within the stat. 1 *Ed.* 2. for imprisonment is nothing else but a restraint of liberty. 2 *Hawk.* 124.

But there must be an actual breaking; for if the door be open, and he goes out, it is no felony, but a misdemeanor only. 2 *Inst.* 589.

But if the prison be fired without the privacy of the prisoner, he may lawfully break it to save his life. *Hale's P. C.* 108.

Also that no breach of prison will amount to felony, unless the prisoner escape. 2 *Hawk.* 125.

Before the statute *de frangentibus prisonam*, by the common law all prison breaches were felonies, if the party were lawfully in custody for any cause whatsoever. *Ibid.* 123. But now, by the statute above-mentioned, the severity of the common law is moderated: which statute says, that prisoners which break prisons the king willeth and commandeth, that none that breaketh prison shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convict thereupon according to the law and custom of the realm. 1 *Ed.* 2.

If a man be indicted for feloniously breaking prison, it is not good, but it ought to rehearse the special matter, that he being imprisoned for such a felony, broke the prison. 2 *Inst.* 591.

U

Every

Discharge out of prison.

Every person assisting a prisoner charged with or attainted of treason or felony, except petit larceny, to attempt to make his escape from any constable, gaol, or boat or vessel carrying felons for transportation, or conveying any instrument or arms to him in gaol, shall be deemed guilty of felony, and transported for seven years: if the prisoner was charged with petit larceny, or any other crime, not by treason or felony, or for any debt, the offender shall be deemed guilty of a misdemeanor, and punished by fine and imprisonment. *Stat. 16 G. 2. c. 31.*

Discharge out of prison.

Discharge of a person out of New Prison for dangerously stabbing his wife with a knife.

To the keeper of New Prison, Clerkenwell.

Middlesex, } **D**ISCHARGE out of your
to wit, } custody the body of *Matthew Talbot*, if detained for no other cause than what is mentioned in my warrant of his commitment, dated the first day of *November*, his wife desiring the same, and it appearing to me, by the certificate under the hand of *C. D.* a surgeon, that the said *Anne* his wife is out of danger from the wound given her by *M. T.* her husband; and for so doing this shall be your warrant. Given under

der my hand and seal this 21st day of November 1751.

If the person above is to be discharged by order of court, then say after the date,

It having been referred to me by order of court bearing date the day of *May* last, to continue, bail or discharge the said *L. B.*

Quakers. See *Tithes*.

Rape. See *Felony*.

Rates or Assessments for the Poor.
See *Settlements*.

Recognizance, bail and mainprize.

Recognizance, what it is.

A Recognizance is a bond of record, What a recog-
nizance is. testifying that the recognizer doth owe a certain sum of money to our sovereign lord the king, with condition that the recognizer shall do some other thing for which he is bound in that sum, in the nature of a penalty, wherein these things are to be known.

First, justices of the peace are to take recognizances for the peace and good behaviour, to bind men to appear at the assizes,

and at the sessions, and for many other causes; and for this any one justice may do it; but for to bail a prisoner for felony, take a recognizance for an alehouse-keeper, and do some other things, there must be two justices, and one alone cannot do it.

It is said, that justices of the peace cannot bind over an offender against a penal law not within their consuance (and not within their commission of the peace, nor committed to the power of any justice of peace) except it be in special cases, where the law itself doth enable them so to do.

All recognizances must be made to the lord the king, and to none other, and in his name.

The justice of the peace need not affix his seal to the recognizance, but he must put his name to it, and then it is good enough.

Bailment, what it is.

What bailment is.

BAILMENT or mainprize (which is one kind of recognizance) is the delivering of a man out of prison before he hath satisfied the law, by taking surety of him that he shall appear and do it; wherein these things are to be known:

First, the justice of the peace must not bail one that is notailable by law; and on the other side, he must bail him that isailable by law, or he may be punished.

In cases of felony there must be two justices of peace, and they two must be present with the felon to bail him.

The

The sureties and sum are to be at the discretion of the justices; but if it be in case of felony, they must take good sureties for the prisoner's appearance, and bind him in a good sum to do it, or he may be fined for his neglect therein. If any law appoints what the sureties and what the sum shall be, that the party bailed must give, that must be pursued.

What sum to be bound in.

If the justices shall at any time judge the sureties insufficient, they may compel the party bailed to put in better sureties, or commit him to gaol for lack of bail.

If the sureties doubt the prisoner will run away and not appear, they may take and carry him to the justice, and desire to be discharged from being bail, and the justice must then discharge them, and commit the principal till he put in new sureties.

Bail may surrender a prisoner.

If the party to be bound be within age, or a woman married, then he or she must be bound by others.

The justice must certify the recognizance, though released.

And if the sureties die, the principal is not compellable to find new sureties, and recognizances are to be certified, notwithstanding the death of the king or the consur.

If a recognizance is taken upon a *supplicavit*, it is discretionary in the justice to take what security he shall think to be sufficient; but it is usual to mention in the body of the *supplicavit*, and then the justice is bound to take that security, and no other. 1 Hawk. P. C. 128. c. 60. s. 10. Skinner's Rep. 6. Molineux's case.

Recognizance upon a *supplicavit*, how to be made.

Upon a motion to the court of king's bench for a *supplicavit*, or to the chancery, you must first exhibit your articles in parchment, then move for a *supplicavit*. *Cumberbatch* 28.

When a *supplicavit* is moved for upon articles exhibited to the court in parchment, &c. the plaintiff swears that he moves not for this out of hatred, but for fear of his life, &c. *Ibid.*

Upon this *supplicavit* the parties are to give security by bond to the sheriff, to appear in this court, *B. R.* and when they come here they must enter into a recognizance. *Ibid.* 427. See *Clavering's* case in the high court of chancery, 2 *Peer Williams*, *Mich.* 1723.

The master of the rolls generally refuses to grant this writ, directing the parties grieved to apply elsewhere to some justice of the peace. *Ibid.* 202.

How recogni-
zances may be
respited.

Upon an affidavit made of the disability of a person, of sickness, &c. it is usual to respite the recognizance till next sessions, indorsing the cause on the back thereof.

And if any person be bound by recognizance with sureties to appear at the next sessions to be held for the county, and die before the time of holding the said sessions, the sureties may plead the death.

Every judgment which shall be given, and every fine which shall be assessed, ought to be openly pronounced and declared by the court. *Lamb.* 554.

Where the statute leaves the fine to the discretion of the court, or any justice differs

in

in opinion touching the quantity of the fine, or the quality of the punishment, the chairman shall state the matter of fact to the court, and every justice there, beginning with the puitne, shall publickly give their several votes, what fine shall be imposed, or what punishment shall be inflicted upon the offender; but if the question be matter of law, the court will take time to advise with the judges according to the form of their commission.

Note; All fines and amerciaments that are in the justices discretion must be reasonable, having regard to the offence. *31 Ed. 3.* Fines to be reasonable.

A freeman not to be amerced for a small fault, and in all cases proportionably to the offence: peers to be amerced by peers. *Magna Charta, 9 H. 3. c. 14. Westm. 1. 3 Ed. 1. c. 6.*

Supplicavit, what it is.

THIS writ is a command out of chancery or king's bench to one or more justices of the peace, to bind some person to the peace or good behaviour. Supplicavit, what it is.

When a *supplicavit* is brought to the justice, then must such justice issue his warrant against the party against whom it is directed.

The form of which warrant must be as follows:

U 4

Suffolk,

Form of a
warrant upon
a supplicavit.

Suffolk, } W. S. esquire, one of his majesty's
to wit, } justices of the peace for the county
aforesaid, to the sheriff of the said
county, and to the high constable of
the hundred of C. and to the petty
constables of, &c. and to the other con-
stables within the said hundred of, &c.

WHEREAS I have received a writ from the king, reciting, that *A. B.* hath prayed his majesty that he the said *A.* being in danger of his life, or of some other bodily hurt, from *G. H.* his said majesty would provide for the security of him the said *A. B.* And thereupon his majesty by the aforesaid writ hath commanded me to cause the said *G. H.* to be brought before me to find security for the peace, or to commit him to gaol, if he shall refuse so to do, as by the said writ, relation being thereunto had, it doth and may more at large appear: therefore I do hereby command you and every of you, immediately upon receipt hereof, to apprehend the said *G. H.* and cause him to come before me to find sufficient sureties for the peace, to be from henceforth kept by him, as well towards his said majesty as all his people, and more especially towards the said *A. B.* and if the said *G. H.* shall refuse so to do, that then you convey him to the common gaol for the said county at *S.* there to remain, until he shall willingly do the same. Given under my hand and seal this day of Oct. 1754.
Then

Then must the justice (being in this case ^{How to be} but as a minister) make a return of the writ ^{returned.} and certificate of his doing, into the court from whence the *supplicavit* issued.

Note; The party must be brought before no other justice but him who grants this warrant, neither can any other discharge him by a *superfedeas*.

When the party is brought before the justice, and hath taken security, as directed by the writ, then the same writ must be returned, and written on the back thereof, thus,

The execution of this writ appears in the schedule thereto annexed.

Then the schedule must be filed to the return of the writ, in a piece of parchment by itself, thus,

I R. C. esquire, one of the justices assigned to keep the peace in the county of S. do humbly certify to our sovereign lord the king, that by virtue of the within written, first delivered to me by the within named *A. B.* I have caused the said *G. H.* named in the said writ, personally to come before me (at such a place) on the 10th day of *September* last past; and I also caused the said *G. H.* then and there to find sufficient security of the peace, according to the form and effect of the writ aforesaid. In witness whereof I have to this schedule set my hand and seal on the 20th day of *September* in the year of our Lord 1754.

The

The justice need not return the recognizance, which is the security by him taken, nor make a certificate, till a *certiorari* comes for that purpose; and when he returns that writ, then he must write on the backside, thus,

I. R. C. one of the justices assigned to keep the peace in the county of S. by virtue of the writ within written, do humbly certify to our sovereign lord the king the tenor of the security of the peace, whereof mention is within made, as in the schedule annexed to this writ, dated the 27th day of in the year of our Lord 1754.

Then write the recognizance *verbatim*, and file it to the writ of *certiorari*, and send it up together; then say,

In witness whereof I have set my hand
and seal this day of S. 1754.

When this is done, the justice may grant a *supersedeas*; the form whereof see p. 306.

The party may also move the court of B. R. for a *supersedeas*, but this must be upon a *supplicavit*, and not where the justice proceeds *ex officio*; because by the stat. 21 Jac. 1. c. 8. it must appear to the court, that process of the peace or good behaviour is required against the offender in that court out of which the *supersedeas* is desired.

If the *supplicavit* be against divers, and the party will release his prayer of the peace against one of them, then that release ought to be certified for him, and the writ must be served

served for the rest, or else *non est inventus* may be certified for him, and the writ may be served on the rest: and this form may serve also where a *certiorari* is brought to a justice of the peace to remove a recognizance taken by him *ex officio*, without any such writ of *supplicavit*, as you may read in the *Register*, fo. 90.

But if the recognizance be not thus removed from the justice of the peace, then may he keep it till the *certiorari* come to him for it. *Lambard* 101, 102. Title *Surety of the peace*.

Before the statute of 33 *H. 8. c. 39.* it was the usual method for justices of the peace to take an obligation in their own names to the use of the king.

But Mr. *Fitzherbert* on the other side (in his *Natura Brevium*, fo. 81.) holdeth, that such an obligation taken to the king by a justice of the peace is nothing worth, for a man cannot be bound to the king (saith he) but only by matter of record, unless he will afterward come into a court of record, and confess it to be his deed, and pray that it may be inrolled there.

But the stat. 33 *H. 8. c. 39.* hath made a plain law in these cases, and willeth that all obligations and specialties (made for any cause touching the king) shall be made in his own name. In the 2d of *H. 7. fo. 1.* it was moved, whether the justice of the peace ought to bring in the recognizance to the *custos rotulorum*, that the party might be called upon. See the statute of 3 *H. 7. c. 1.* which enacts, that every recognizance (taken for the peace, &c.) shall be certified at the next sessions of
the

Recognizance, &c.

the peace, that the party may thereupon be called, and his default (if any happen) may be recorded, whereby it plainly appears that every recognizance ought now to contain the appearance of the party at the next sessions. *Lambard, fo. 96, 97. c. 2.*

When a person is brought before a justice upon a warrant for the peace, assaulting or beating any person, for any crime under felony, he must take a recognizance with two sureties for his appearance at the next general or quarter sessions, or the party must be committed to prison.

The recognizance.

Form of a recognizance.

Middlesex, } *J. W.* of the parish of *S.* in the
to wit, } said county, taylor, came before me, one of his majesty's justices of the peace for the said county, and acknowledged himself to be indebted

l. s. d.

To our sovereign lord the king in }
the sum of } 20 0 0
R. H. of the same parish, yeoman, }
in the sum of } 10 0 0
W. T. of the same, yeoman, in the }
sum of } 10 0 0

Upon condition, that if the above *J. W.* do personally appear at the next general sessions of the peace to be held for the said county, then and there to answer the complaint of *R. J.* for assaulting, beating and wounding him; (or as the case shall be; but if for the peace or good behaviour, then say) and in the mean

mean time shall keep the peace, or be of good behaviour towards our sovereign lord the king and all his liege people, especially towards the said R. J. and do not depart the court without licence; then this recognizance to be void, or else to remain in full force.

Taken and acknowledged
the 30th day of *Septem.*
1751, before me

R. C.

The recognizance for good behaviour may be taken without sureties, if the justice thinks fit, for it is discretionary in him. *Nelson, part 1. p. 120.*

When the justice's clerk has entered and made up the recognizance in his book in a short manner, then he reads the condition to the parties bound, thus;

You (*who is the principal in the recognizance, calling him by his name*) do acknowledge to owe to our sovereign lord the king the sum of 20*l.* to be levied upon your goods and chattels, lands and tenements, to his majesty's use. Upon condition that you personally appear at the next general sessions of the peace; (*or if at the quarter-sessions, then*) at the next general quarter-sessions; (*or if at the present sessions, then say*) at this present sessions, to answer the complaint of R. J. for assaulting and beating (*or as the case shall be*) then this recognizance to be void.

Next general
or quarter
sessions are sy-
nonymous
terms.

Then repeat the same, in manner as above, to the bail, saying, You (*naming them*) do jointly and severally acknowledge to owe to
our

our sovereign lord the king the sum of 10*l.* a-piece, to be levied as above to the use as above, on condition that the above bound *R. J.* do personally appear, as in the condition; then to be void.

Every recognizance of the peace to be certified the next sessions.

The recognizance must be certified at the next sessions, on pain of 10*l.* and if the party doth not appear, the recognizance, with the cause of forfeiture, must be certified into the exchequer. *Dalt.* 190.

Recognizance against felons must be certified to the next gaol-delivery.

If they concern the evidence against felons, then must they be certified the next gaol-delivery. *1 P. & M. c. 10.*

Recognizance to prosecute a felon.

Recognizance to prosecute a felon.

Middlesex, } *JOHN TRUEMAN* of the
to wit, } parish of *St. Luke* in the said
county, yeoman, acknowledges himself to be indebted to our sovereign lord the king in the sum of 10*l.* to be levied upon his goods and chattels, lands and tenements, to his majesty's use.

Upon condition that the said *John Trueman* do personally appear at the next general sessions of the peace to be holden in and for the said county; (or if in the country, then say) to appear before his majesty's justices of gaol-delivery at the next assizes to be held for the said county, and then and there prefer, or cause to be preferred, one or more bill or bills of indictment against *W. R.* for feloniously stealing and taking from the said *John Trueman* one silk quilt of the value of 40*s.* the property of the said *John Trueman*; and

and do give evidence thereupon, as well to the jury who are to inquire thereof on the behalf of our sovereign lord the king, as to the jury who are to pass upon the trial of the said *W. R.* and not to depart without licence of the court; then this recognizance to be void, or else to remain in full force.

Taken and acknowledged
the 20th day of *Septem.*
1751, before me

Recognizance to appear and give evidence.

Middlesex, } *A. B.* of the parish of *C.* in the *Recognizance*
to wit, } *A.* said county, taylor, acknow- *to appear and*
ledges himself to be indebted to our sovereign *give evidence,*
lord the king in the sum of 20*l.* to be levied
upon his goods and chattels, lands and tene-
ments, to his majesty's use.

Upon condition that the said *A. B.* do ap-
pear at the next general sessions of the peace
to be holden in and for the said county; (*or*
if in the country, then say) to appear before
his majesty's justices of gaol-delivery at the
next assizes to be held for the said county,
and there give evidence upon one or more
bill or bills of indictment against *W. R.* for
feloniously stealing and taking from *J. T.* one
silke quilt of the value of 40*s.* the property
of the said *J. T.* and do give evidence there-
upon, as well to the jury who are to inquire
thereof on the behalf of our sovereign lord
the king, as to the jury who are to pass upon
the trial of the said *W. R.* and do not depart
3 without

without licence of the court; then this recognizance to be void, or else to remain in full force.

Taken and acknowledged
the 20th day of *Septem.*
1751, before me

Note; Several may be bound in one recognizance to give evidence, and then say at the beginning,

A. B. of such a place, *B. C.* of such a place, &c. jointly and severally acknowledge to owe to our sovereign lord the king the sum of, &c. to be levied upon their goods and chattels, lands and tenements, to his majesty's use. Upon condition that they severally appear and severally give evidence, &c.

It is matter of record as soon as it is taken or acknowledged, though it is not made up, but only entered in the justice's book.

No indictment will lie for a breach of it. *Raym.* 196.

When the recognizance is entered or made up, you must read the condition to the parties bound, calling them by their names, as thus,

You acknowledge to owe unto our sovereign lord the king the sum of, &c. as in the above recognizance; and in the condition as above.

The recognizance is to be ingrossed on parchment, to which the justice subscribes his name, but the persons bound need not set their names to it.

Superfedeas,

Supersedeas, what it is.

THIS writ is to command to stay the *Supersedeas*, doing of that, which in appearance were what it is. to be done, were it not for the cause whereupon the writ is granted; as if one swear, and desire the peace, the justice cannot deny it; but if the party be formerly bound elsewhere, this writ lieth to stay the justice from binding the party.

After a *supersedeas* delivered to the officer, if he insist on new sureties, the party may refuse, and if he be committed, the party may have his action. *Lambard* 29.

Justices cannot award process on recognizances; but those records must be certified into the exchequer.

He who fears sureties of the peace will be demanded of him, may, on entering into such recognizance as above said, either before or after a warrant issued against him, have a *supersedeas* from such justice.

That before the statute of 21 *Jac.* 1. c. 8. it was a common practice to get writs of *supersedeas* out of any of the courts upon insufficient sureties; (*Hawk. P. C. b. 1. c. 40.*) which *supersedeas* you may see as follows:

Superseas.

*To all constables, headboroughs, and all others
his majesty's officers of the peace for the
said county, whom it may concern.*

Middlesex, } **W**HEREAS *J. L.* hath this
-to wit, } day found sufficient sure-
ties before me, one of his majesty's justices
of the peace for the said county, for his per-
sonal appearance at the next general sessions
(or if to the quarter-sessions, then say) quarter-
sessions of the peace to be holden at *Hicks's*
hall in *St. John's street*, in and for the said
county, then and there to answer the com-
plaint of *R. B.* for assaulting, beating and
abusing him against the peace, &c. (or as the
case shall be). These are therefore in his ma-
jesty's name to charge and command you,
and every of you, immediately on sight
hereof, not to arrest, imprison, molest, or
any otherwise detain the body of the said
J. L. for, by reason or means of the fact
abovementioned, and no other; and this shall
be to you, each and every of you, a suffi-
cient warrant. Given under my hand and
seal this fifth day of *October* in the year of
our Lord 1751.

But if a person taken up on a warrant be
in prison for want of bail, and afterwards
bail shall be given, he must be discharged.

Replevin.

Replevin.

A REPLEVIN is grounded upon a distress, and is a redeliverance of it, that the thing distrained may remain with the first possessor, on surety given him to try the right with the distrainer, and answer the same at law; and if he do not pursue his action, or it be judged against him, then he that took the distress shall have it again by a writ of *retorno habendo*. 1 *Inst.* 145, 161. Replevin grounded on a distress.

The sheriff of every county shall, at his first county day, or in two months after he hath received his patent of office, appoint four deputies at the least, dwelling not above twelve miles distant one from another, to make replevins, on pain of 5*l.* a month, half to the king, and half to him that shall sue in any court of record. 1 *P. & M. c.* 12. Sheriff to appoint deputies to make replevins.

Replevins are by writ at common law, or on plaint by statute, for the party's more speedy having again his cattle and goods distrained; here the sheriff ought to take two sorts of pledges, one by the common law to prosecute, and another by the statute to return the distress, if the taking be judged lawful; and the sheriff taking a distress without these pledges, must answer the price thereof. 1 *Inst.* 145. *F. N. B.* 69.

Replevin by writ lies in the courts at *Westminster*; and a replevin may be removed out of other courts into those courts, and tried there.

Replevin by plaint may be brought in the county court, hundred court and court baron: the most usual method to obtain a replevin is by plaint; and the sheriff may take a plaint by the statute, and make a replevin presently, and enter it in the county court afterwards. *Dyer* 246. 1 *Inst.* 139.

If the defendant in a replevin claims the property of the goods, the sheriff cannot proceed till it is decided before him by a writ *de proprietate probanda*; and if found for the plaintiff, the sheriff is to make replevin or deliverance; but if for the defendant, he is to do nothing further: tho' the plaintiff may replevy by writ afterwards, and if the sheriff returns the property claimed, it shall be put in issue, and tried in the common pleas. *Finch* 316, 317.

Where cattle and goods are not delivered upon a first replevin, the party distrained may have an *alias* and *pluries* replevin in the general prosecution of it; and if the cattle are put into any strong place, the sheriff may take the *posse comitatus* and break into it, to make the replevin: when they are driven out of the county, &c. so that the sheriff cannot make replevin, a writ of *withernam* shall go to take so many of the distrainer's cattle, till the party make deliverance of the first distress, &c. and in this case the cattle taken shall be to the value of those that were first taken and distrained. 2 *Inst.* 140. 1 *P. & M.*

Replevins
must be cer-
tain in setting
forth the num-
ber of cattle,
&c.

On bringing a replevin it must be certain in setting forth the number and kinds of the cattle distrained, that the sheriff may know how to make deliverance of the cattle distrained. *Raym.* 33. *F. N. B.* 72.

The sheriff, or other officer having authority to grant replevins, shall in every replevin of a distress for rent take in his own name, from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness, and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods distrained, in case a return shall be awarded before any deliverance be made of the distress; and the sheriff shall assign such bond to the avowant or person making consuance. *Stat. 11 G. 2. c. 19.*

The defendant in replevin may avow or justify; but if he justifies, he cannot have a return, as he shall have if he avows.

An avowry is, where the taker of a distress avows the taking; he must avow and justify in his plea for what cause he took it; if he took it in his own right, then this is called an avowry; if he took it in the right of another, then, when he hath shewed the cause, he must make consuance of the taking, as bailiff or servant to him in whose right he took it.

The defendant in replevin may avow generally, that the tenant of the lands whereon the distress was made, held the same at such rent during the time the rent distrained for incurred, &c. without setting forth the landlord's grant or title; and if the plaintiff become nonsuit, the defendant shall have double costs.

Defendant in replevin, how to avow. —

Sheriffs, and other officers granting replevins, and taking bonds to prosecute with ef-

feet, &c. shall at request assign them to the avowant or defendant by indorsement, which if forfeited, the avowant may bring an action thereon in his own name, and the court may give reasonable relief to the parties by rule of the same court, &c. by the statute of 11 G. 2. c. 19.

An avowry may be made either on a distress for rent or for damage feasant, &c.

The form of a count or declaration in replevin.

Middlesex, } *A* B. and T. B. were summoned to answer C. D. gentleman, of a plea, wherefore they took the cattle of the said C. and them unjustly detained against pledges, &c. and whereupon the said C. by T. P. his attorney, complains, that the said A. B. and T. B. the day of in the year of the reign of, &c. at D. in a certain place there, called *Close*, took the cattle; to wit, two heifers and one bay horse of the said C. and the same unjustly detained against sureties and pledges, until, &c. Whereupon he saith that he is the worse, and hath damage to the value of 20*l.* and therefore he brings his suit, &c.

No person shall take for keeping in pound or impounding any distress, above 4*d.* for any one whole distress; and where less hath been used, there to take less, on pain of 5*l.* to the party grieved, besides what he shall take above 4*d.* See **Distresses.**

Replevin

Replevin of goods taken upon a conviction—The court of *B. R.* granted an attachment against the under sheriff of *Cumberland*, for granting a replevin of goods distrained on a conviction for deer-stealing. *The king against Monkhouse*, 2 *Strange's Rep.* 1184.

Rioters.

BY the statute of 1 G. 1. c. 5. if twelve or more unlawfully and riotously assemble, a justice of the peace, sheriff, mayor or other head officer of any town corporate, on notice of such assembly, shall come as near them as he can with safety, and make the following

Proclamation.

OUR sovereign lord the king chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of king *George* the first, for preventing tumults and riotous assemblies.

GOD save the King.

If the rioters do not disperse within an hour after proclamation made, or if they obstruct or hinder the proclamation, or hurt
X 4 him

him who makes it, it is felony without benefit of the clergy; and high constables, petty constables, and persons assisting, may seize them, and carry them before a justice; and if any of the rioters are killed, he who killed them is indemnified.

Robberies.

Made perpetual by 28G. 2.

Stat. 25 G. 2. *To prevent thefts and robberies.*

THAT after the first day of *June* 1752, any person advertising a reward with no questions asked, for things lost or stolen, or promising any pawnbroker in such advertisement, who advanced money upon such things so stolen, the money so paid; and any person printing or publishing such advertisement, shall forfeit 50 *l.* to any person who shall sue for the same.

That after the first of *December* 1752, any house, room or other place kept for dancing, musick, &c. in the cities of *London* or *Westminster*, or within twenty miles thereof, without licence from the last preceding *Michaelmas* quarter-sessions of the peace for the county, city or division in which such house, &c. is situate, who are authorized to grant such licences as they think proper, signified under the hands and seals of four or more justices of the peace there assembled, shall be deemed a disorderly house; and every such licence shall

shall be signed and sealed by four justices in open court, and afterwards publickly read in open court by the clerk of the peace, together with the names of the justices subscribing the same: and no such licence shall be granted at any adjourned sessions; nor shall any fee or reward be taken for such licence. And it shall be lawful for any constable or other person, being authorized by warrant of one or more justice or justices of the division, &c. where such place shall be situate, to enter such house, &c. and seize every person who shall be found therein, who shall be dealt with according to law: and every person keeping such house, &c. without licence, to forfeit 100 l. to such person who shall sue for the same, and be otherwise punishable, as in case of a disorderly house.

That there shall be an inscription at the entrance of every house, &c. kept for any of the purposes aforesaid, in large capital letters, *Licensed pursuant to act of parliament of the twenty-fifth of king George the second*; and that no such house, garden, &c. shall be open before the hour of five in the afternoon; and that the inscription aforesaid and limitation aforesaid in point of time, shall be inserted in such licence: and in case of any breach of either of the said conditions, such licence shall be forfeited, and shall not be renewed. Not to extend to the king's theatres, &c.

That if any two inhabitants of any parish, paying scot, &c. do give notice in writing to any constable or other peace officer, of any person keeping a bawdy-house, gaming-house,

house, or any other disorderly house, the constable, &c. receiving such notice shall forthwith go with such inhabitants to a justice of the peace of the county, &c. in which such parish does lie, and upon making oath before such justice, that they do believe the contents of such notice to be true; and entering into a recognizance in the penal sum of 20*l.* each, to produce material evidence against such person for such offence; to enter into a recognizance in the penal sum of 30*l.* to prosecute such person with effect at the next general or quarter sessions, or the next assizes for the county in which such parish, &c. does lie; and such constable or other officer shall be allowed all reasonable expences of such prosecution, to be ascertained by any two justices of the county, &c. where the offence shall be committed, and shall be paid by the overseers of the poor of such parish: and in case such person shall be convicted, the overseers of such parish shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect to pay such constable, &c. such expences as aforesaid, or refuse to pay on demand the sum of 10*l.* and 10*l.* such overseers shall forfeit double the sum.

That upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice shall forthwith make out a warrant to bring the person so accused of keeping a bawdy-house, gaming-house, &c. before him, and shall bind him over to appear at such general or quarter sessions or assizes, there to answer such bill of indictment

indictment as shall be found against him or her for such offence; and such justice may likewise demand security for such persons good behaviour in the mean time, until such indictment shall be found and determined, or returned by the grand jury a true bill.

That in case such constable shall neglect or refuse to go before any justice, or to enter into such recognizance, or shall be negligent in said prosecution, shall forfeit for every such offence 20*l.* to each of such inhabitants.

That any person who shall appear, act or behave him or herself as master or mistress, or as the person having the care of any bawdy-house, gaming-house, or other disorderly house, shall be deemed a keeper thereof.

That upon any prosecution against any person for keeping a bawdy-house, gaming-house, &c. any person may give evidence in such prosecution against the defendant or for the defendant, notwithstanding being an inhabitant of the said parish, or entered into such recognizance as aforesaid.

That no indictment after first of June, preferred against any person for keeping a bawdy-house, shall be removed by any writ of *certiorari*.

That it shall be in the power of the court before whom any person has been tried and convicted in any grand or petit larceny, &c. at the prayer of the prosecutor, and in consideration of his circumstances, to order the treasurer of the county in which such offence shall be committed, to pay unto such prosecutor such sum of money, as to the court shall seem reasonable, not exceeding the expences

pences which shall appear to the court the prosecutor was put unto in carrying on such prosecution, making him a reasonable allowance for his time and trouble; which order the clerk of assize or peace is directed forthwith to make out unto such prosecutor upon being paid 1 s. and the treasurer of the county is required on sight to pay such prosecutor.

That it shall be lawful for any two or more justices (in case any person apprehended upon any general search, or upon any special warrant, shall be charged with being a rogue and vagabond, or an idle person, or with suspicion of felony, though no direct proof be then made) to examine such person on oath, not only as to the parish or place where he was last legally settled, but also to his means of livelihood; the substance of which examination shall be put into writing, and be subscribed or signed by the person so examined, and the said justice shall likewise sign the same, and transmit it to the next general or quarter sessions to be kept on record: and if such person shall not make it appear to such justice, that he has a lawful way of getting his livelihood, or shall not procure some responsible housekeeper to appear to his character, and to give security for his appearance before such justices at some other day to be fixed for such purpose (in case the same shall be required) to commit such person to some prison for any time not exceeding six days, and in the mean time to order the overseers of the poor in such parish he shall be apprehended in, to insert an advertisement in some publick paper, describing such

such person, and any thing which such person shall have found upon him, and which shall be suspected not to be honestly come by, and mentioning the place to which such person shall be committed; and if no accusation shall be then laid against him, to be discharged, or otherwise dealt with according to law.

That any person intituled to any of the forfeitures by this act, may sue for the same by action of debt in any of his majesty's courts of record, &c. in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of being forfeited by an act, intituled, *An act for the better preventing thefts and robberies, and for regulating places of publick entertainment, and punishing persons keeping disorderly houses;* and the plaintiff, if he recover, shall have his full cost.

That no action shall be brought, unless the same shall be commenced within six calendar months after the offence committed.

The above statute made perpetual by stat. 28 G. 2.

Robber and robberies.

THE crime of robbery on the highway is a felonious and violent taking away of money or goods from the person of another on the highway, thereby putting him in fear.

If any thing is taken from another, without putting him in fear, which distinguishes this

this crime, it is properly no robbery, but felony, wherein clergy is allowed.

It is felony without the benefit of the clergy, though the sum or value be under 12*d.* or but 1*d.* but by the common law something must be taken.

By the stat. 7 G. 2. persons convicted of assaulting others, or by menaces, or forcible manner demand money, goods, &c. with a felonious intent to rob, shall be transported.

The hundred wherein robberies are committed, is liable to answer the money, when done on the highway and in the day-time, that is, clear light, though it be before the sun-rise, and after sun-setting. 1 Cro. 270.
1 Lev. 27.

If the robbery be in a field or close, the action will lie, by the stat. 4 & 5 W. & M.

The felons must be fled; for if any of them be apprehended, although it be by the party robbed, the action will not hold, and pursuit without taking will not excuse the hundred.

It must be a robbery on the person; for if a man is gone aside, and hath left his horse tied, which has a cloak-bag, or if a carrier be behind his horses, and near them, and his packs be robbed before he come, no action will lie for this.

So if a servant or carrier be robbed of his master's money or goods, the master may sue, but the servant or carrier must be examined on oath; but if he will not be examined, the master may be a witness in his own case, but he must make clear proof of the goods.

Also

Also if a carrier that is answerable, be robbed of another man's goods, either he or the owner may sue. 3 *Cro.* 4. 2 *Saund.* 380. *Style* 215.

This action may be brought by bill or original, and the plaintiff in his count ought to shew the particulars of goods (though he need not in the writ) and to the persons they belonged.

But this method of recovery against the hundred is in some measure altered; for by the stat. 8 G. 2. c. 10. no person shall sue the hundred in case of robbery without first giving notice to some constable, headborough, &c. near the place of robbery, and leaving notice in writing, describing the felons, the time and place, and publishing the same in the *Gazette* within twenty days after the robbery, and shall, before bringing the action, enter with two sureties into a bond of 100*l.* to the high constable, conditioned to pay the cost, if nonsuited, or judgment against the plaintiff.

The bond may be entered into before the chief clerk or secondary, the filazer, the clerk of the pleas of the court of exchequer, or the sheriff of the county.

If before the sheriff, he is to certify the same to the proper officer of the court where the action is brought, before process be granted. No more than 5*s.* and the stamps to be taken for the bond, and 2*s.* 6*d.* for filing the certificate; the bond to be delivered *gratis* to the high constable.

The hundred not chargeable, if one of the felons be taken in forty days after notice in the

the *Gazette*, the high constable only to be served with the process, who is to give notice in the next market-town in the hundred, then in some parish church, and shall enter into an appearance, and defend as he shall be advised.

If the plaintiff recover, the sheriff to serve the writ of execution on any inhabitant of the hundred, and shall only shew the same to the next justices, who are to tax the hundred, and levy the same as directed by the 27 *Eliz. c. 13*.

The money to be paid in ten days after the collection to the sheriff, for the use of the plaintiff, without fee, and not to make a return of the writ till forty days after delivery.

If the plaintiff and his sureties become insolvent, the writ of execution shall only be shewn to the two next justices, who are to tax the hundred as by the 27 *Eliz.* to be paid to the sheriff in ten days after collection, for the use of the plaintiff, and not to make a return of the writ till sixty days after delivery.

If the plaintiff and sureties become insolvent, the high constable to be reimbursed, and a reward of 10 *l.* given for apprehending a felon, to be assessed by the two justices.

Persons intitled to a reward not incapable to be a witness in such action.

Constables, &c. neglecting to make fresh suit and hue and cry, forfeit 5 *l.* one moiety to the king, and the other to the informer.

Persons prosecuted for any thing done in pursuance of this act or the former act, may plead the general issue, and have full costs.

In

In actions brought against the hundred on either of the said statutes, any inhabitant of the hundred may be a witness for the hundred.

The statute of 28 G. 2. recites, that doubts have arisen upon the construction of 26 G. 2. for regulating the manner of licensing ale-houses, and for the more easy convicting persons selling ale without licence, whether a person having been convicted of three several offences in selling ale, &c. as the said act directs, is liable to any punishment for any such offence, of which he may be guilty after such third conviction, it is enacted, that every person so selling without licence, after such third conviction, shall for every such offence forfeit 6*l.* to be levied and disposed of as the first, second and third conviction are directed by the said act; and where no sufficient distress shall be found, the justice shall commit the offender to the common gaol or house of correction without bail, until he shall be discharged by order of general or quarter sessions.

And it is enacted by the said act of the 28th of G. 2. that if any person after the first of *August* 1755, shall set fire to, or abet or assist in the burning any goss, furze or fern growing upon any forest or chace, without licence, and being brought before any justice for the said county or place, and shall be thereupon convicted by confession, or upon the oath of one credible witness, or upon the view of such justice, shall forfeit any sum not exceeding 5*l.* nor less than 40*s.* one moiety to the informer, and the other to the

use of the poor of the parish where the offence shall be committed, to be levied by distress and sale, and for want of sufficient distress shall be committed for any time not exceeding three months, nor less than one.

Scavengers.

When and
how to be
chosen.

UPON every *Monday* or *Tuesday* in *Easter* week, yearly, two tradesmen are to be elected scavengers in each parish by the constables, churchwardens, overseers of the poor, surveyors of the highways, and other inhabitants, who must take upon them the office in seven days after election and notice, or forfeit 10*l.* to be levied by distress by virtue of a warrant from one justice, and for want of a distress the offender to be committed, the penalty to be employed in repairing the highways and streets in the same parish.

How to settle
a tax.

Within twenty days after the election of the scavengers, the constables, churchwardens, inhabitants and overseers of the poor, are to settle a tax according to a pound rate for the next year, which is to be allowed by two justices, and not to exceed 4*d.* in the pound. Carts, &c. not to be drawn with above three horses under the penalty of 40*s.* No person to keep swine in backfides, &c. of paved streets. *Stat. 2 W. & M. c. 2. 18 G. 2. c. 33.*

Scavengers

Scavengers may be appointed by the quarter-sessions for cleansing the streets, &c. in any market-town, and assessments, &c. made not exceeding 6*d.* in the pound.

Scavengers every day, except *Sundays* or holidays, are to bring carts into the streets, and to give notice by a bell or otherwise of carrying away dirt, and to stay a convenient time, or shall forfeit 40*s.*

The inhabitants of *London, Westminster, Kensington, Southwark*, and within the bills of mortality, are to sweep their streets every *Wednesday* and *Saturday*, or they forfeit for every neglect 3*s.* 4*d.* This is increased to 10*s.* by 8 & 9 *W.* 3.

The justices may order an assessment to be made not exceeding 4*d.* *per* pound for lands, and 8*d.* for every 20*l.* personal estate, every year; and constables, churchwardens, &c. may make a tax, being allowed by two justices, to be collected quarterly, and to be levied by distress and sale, &c. if not paid within fourteen days.

The assessment for scavengers in the parishes of *St. Anne* and *St. James* within the city of *Westminster*, shall be rated according to the custom of the said city, where it is not otherwise provided.

The ancient streets of *London* are to be maintained according to custom; the lord mayor or any alderman may present upon view an offence within the city and liberties, and assess fines not exceeding 20*s.* for every offence, to be paid to the chamberlain for the use of the city. *Stat. 2 W. & M.*

Scavengers.

Scavengers, when new ones are chosen, must account in twenty-eight days, before two justices of the peace, for the monies assessed and collected, and what remains in their hands must be paid to the new officers: refusing to account to be committed till they do, and until payment is made.

The penalties above are recoverable by distress by warrant from a justice, &c. to the constable; and if the offender be convicted by view of the justice, one half of them goes to the poor, and the other to the repair of the ways; but if by evidence, the penalties are distributed between the poor and the prosecutor.

A warrant for not paying the scavengers rate.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } THESE are in his majesty's
to wit, } name to command you and every of you, immediately upon sight hereof, to summon the parties hereafter named, *A. B. C. D. E. F. L. R. &c.* personally to be and appear before us on *Monday* next, being the day of *June*, by three of the clock in the afternoon at *A.* in *B.* then and there to shew cause why they refuse to pay their rates to the scavengers for cleansing of the parish of *B.* within the said county; and if they or any of them refuse to appear upon this our summons, that then you bring such parties before us at the time and place aforesaid, to find

find sureties for their good behaviour and personal appearance at the next general quarter-sessions of the peace for the said county of *M.* to answer the said crimes: hereof fail not. Given under our hands and seals this day of in the year of our Lord 1755.

Two justices,

Servants.

IF a servant borrow money in his master's name, the master shall not be charged with it, unless it come to his use, and that by his assent; and the same law is, if a servant make a contract in his master's name, the contract shall not bind his master, unless it were by his master's commandment, or that it came to his master's use by his assent: but if a man sends his servant to a fair or market to buy for him certain things, though he command him not to buy them of any man in certain, and the servant doth accordingly, the master shall be charged; but if the servant in that case buy them in his own name, not speaking of his master, the master shall not be charged, unless the things come to his use.

Borrowing money in master's name, master not chargeable unless it came to his use.

If a man send his servant to the market with a thing which he knoweth to be defective, to be sold to a certain man, and he selleth it to him, there an action lieth against the master; but if the master biddeth him

Y 3

not

not to sell it to any person in certain, but generally to whom he can, and he selleth it accordingly, there lieth no action of deceit against the master. *Dr. & Stud.* 284, 285.

Tailors.

Contracts entered into by journeymen tailors, &c. for raising wages, &c. void.

Tailors taking greater wages than allowed by statute, the penalty.

Tailors giving greater wages than this act allows, to forfeit 5*l.* And journeymen accepting it, or refusing to serve for wages appointed, shall be sent to the house of correction for two months.

Masters not paying wages, how to be levied.

Masters not paying lawful wages, justices of the peace to levy it by distress, &c. *Stat.* 7 G. 1. c. 13.

Woollen manufacturers.

Imbezilling woollen materials, the forfeiture.

Persons imbezilling any woollen materials, &c. shall forfeit double the value, or be sent to the house of correction, and there whipt, and kept to hard labour for fourteen days; and for a second offence forfeit four times the value, &c. 13 G. 2. c. 8.

Every clothier, clothworker, card-maker, or other person concerned in the woollen manufactory, shall pay his workmen in money, and not in goods, on pain of 40*s.* on conviction (in forty days) before one justice on oath of one witness, to be disposed of, if in *London*, to the benefit of *Christ's hospital*, if elsewhere, to the poor where the offence shall be committed; and if he shall not pay in thirty days, to be levied by the constable by

warrant of such justice, by distress and sale; and where no sufficient distress can be found, to be committed to the common gaol or house of correction, to be kept to hard labour for three calendar months. 1 G. 2. c. 15.

Contracts and combinations of weavers, and making by-laws for regulating the clothiers, or advancing their wages, to be void, and offenders committed to prison for three months; and the like punishment for leaving service before their work is finished. Combination of weavers for advancing wages, three months imprisonment.

Damaging any work to forfeit double the value.

Clothiers shall pay journeymen weavers wages in money, and not goods, which may be levied by two justices.

Persons assaulting any master weaver, or sending threatening letters, &c. for not submitting to illegal by-laws, is felony and transportation. 12 G. 1. c. 34.

Manufacturers of woollen, linen, fustian, cotton and iron.

By the stat. 1 Ann. 2. c. 18. if any person employed in the woollen, linen, cotton or iron manufactures, shall imbezil or purloin any wefts, thrums or ends of yarn, or any other materials of wool, hemp, flax, cotton or iron, or shall reel short or false yarn, and shall be convicted by oath of one witness, or confession before one justice, he shall forfeit double the value of the damages; and if he shall neglect or refuse to pay the same, he

Manufacturers of woollen, linen, &c. reeling short or false yarn, how punished.

shall be committed to the house of correction until satisfaction shall be made; and if it shall appear to the justice that he is not able to make satisfaction, he shall be there publickly whipt, and kept to hard labour, not exceeding fourteen days.

Departing
from such
work before
finished, to be
imprisoned.

And departing from such work before the same shall be finished, unless it be for non-payment of wages, or other lawful cause, shall be imprisoned for a month without bail, and the forfeiture of 5*l.* to the party from whom he shall depart, to be recovered by action of debt, &c. *Stat. 5 Eliz. c. 4.*

Silk-throwers.

Every person that shall imbezil, pawn, sell or detain any silk delivered to him to be wrought, or after it is wrought up, and also the receiver and buyer thereof, or such as take the same to pawn, shall be subject to all the penalties of 13 & 14 *Car. 2.* and 20 *Car. 2.*

None to exercise the silk-throwers trade, but such as have served seven years apprenticeship, on pain of 40*s.* a month; and silk-winders, &c. imbezilling silk, to make such recompence as the justice of the peace shall appoint. *Stat. 13 & 14 Car. 2. c. 15.*

Manufacturers of clocks and watches. See Watchmakers.

Seamen.

Seamen.

No master of a ship to imploy seamen without contract in writing, on pain of 5*l.* a ship to imploy seamen without contract in writing. and deserting afterwards, they may be apprehended by a justice's warrant, and committed to the house of correction, &c.

If any seaman desert on his voyage, he shall lose his wages; absenting himself without leave, to forfeit for every day two days pay; and if he quits the ship before discharged, incurs the forfeiture of one month's pay to the use of *Greenwich* hospital. On the arrival of ships, masters to pay the seamen their wages in thirty days, under a certain penalty in the act mentioned. Seamen belonging to a merchant-ship not debarred from entering into the king's service. *Stat. 2 G. 2. c. 36.*

Shoemakers.

Journeyman shoemakers imbezilling or pawning shoes, leather, &c. a justice of the peace may order satisfaction, or cause the offenders to be whipt; the like penalty to be inflicted on those that buy or take in pawn shoes, &c. Pawning or imbezilling leather or shoes, the punishment.

Journeyman leaving their work undertaken, to be sent to the house of correction for a month. *Stat. 9 G. 1. c. 27.*

A penalty of 5*l.* is laid on every currier, who shall not curry leather sent him within sixteen days between *Michaelmas* and *Lady-day*,

day, and within eight days at other times.
Stat. 12 G. 2. c. 25.

Shoemakers within the bills of mortality.

Shoemakers
 retained by
 one master,
 and retained
 by another
 before finish-
 ing their work,
 the penalty,

A shoemaker retained by one master, and who shall suffer himself to be retained by any other before he hath finished his work, shall, on conviction on oath of one witness before one justice, be sent to the house of correction not exceeding a month.

Persons aggrieved may appeal to the next sessions, giving eight days notice. *Stat. 9 G. 2. c. 27.*

Warrant against a journeyman taylor for refusing to work for the statute wages.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } THESE are in his majesty's
to wit, } I name to command you and
 every of you, upon sight hereof, to take and
 bring before us, two of his majesty's justices
 of the peace for the said county, the body of
 F. G. a journeyman taylor, of whom you shall
 have notice, to answer to all such matters and
 things as on his majesty's behalf are on oath
 objected against him by A. B. taylor, for re-
 fusing to work with the said A. B. for the
 wages of contrary to the statute in
 such case made and provided: hereof fail not
 at your peril. Given under our hands and
 seals this day of 1753.

An order to pay servants wages.

To A. B. of the parish of K. in the said county.

Middlesex, } **W**HEREAS upon examination on oath of S. L. of the parish of K. labourer, in the said county, it appeared to me, one of his majesty's justices of the peace for the said county, that you have refused, and do still refuse to pay him the sum of 20 s. which you owe him for wages; I did therefore, by a summons under my hand and seal dated the day of summon and require you to appear before me at the time and place therein mentioned, to answer all such matters and things as the said S. L. should object against you, relating to the premisses: but as you have not shewn any just cause why you have not paid the said sum of 20 s. and still detain the same; I do hereby order and require you to pay the said S. L. the said sum of 20 s. and in case of refusal or non-payment of the said sum of 20 s. by the space of one and twenty days from the date hereof, I shall issue forth my warrant to levy the same by distress and sale of your goods and chattels. Given under my hand and seal the day of 1753.

Note; There must issue forth a summons before such order be made; and servants abovementioned are intended servants in husbandry.

Distress

Distress for not paying servants wages.

To all constables, and other his majesty's officers of the peace whom the execution hereof may concern, and to each of them.

Middlesex, } **W**HEREAS upon examination on oath of *S. L.* it appeared to me, one of his majesty's justices of the peace for the said county, that *A. B.* of the parish of *K.* in the said county had refused to pay him the sum of 20*s.* which he owed him for wages; I did therefore, by a summons under my hand and seal dated the day of summon and require the said *A. B.* to appear before me at the time and place therein mentioned, to answer all such matters and things which the said *S. L.* should object against him, relating to the premisses; but as the said *A. B.* did not shew any just cause why he had not paid the said sum of 20*s.* to, and continued to detain the same from the said *S. L.* I did, by an order under my hand and seal dated the day of order and require the said *A. B.* to pay to the said *S. L.* the said sum of 20*s.* and also informed the said *A. B.* that in case of refusal or non-payment of the said sum of 20*s.* by the space of twenty-one days from the date of the said order, I should issue forth my warrant to levy the same by distress and sale of his goods and chattels. And whereas the said twenty-one days are now expired, and it appears to me upon the oath of the said *S. L.* that the said *A. B.* doth still refuse to

to pay, and hath not paid to him the said sum of 20 s. These are therefore in his majesty's name to require and command you, the said constables, and other his majesty's officers of the peace, and each of you, forthwith on sight hereof to levy the said sum of 20 s. by distress and sale of the goods and chattels of the said *A. B.* rendering to him the overplus, unless such sum, together with the reasonable charges of taking and keeping the same, be paid in days, pursuant to the statute in such case made and provided: hereof fail not at your peril. Given under my hand and seal the day of 1753.

Complaints and disputes between masters or mistresses, or servants in husbandry hired for one year or longer; or between masters or mistresses, and artificers, handicraftsmen, miners, colliers, keelmen, &c. may be determined by a justice or justices of the peace of the county, &c. where such master or mistress shall inhabit, though no rate of wages shall be made that year by the justices, provided the sum in question exceed not 10 l. to a servant, or 5 l. to any artificer; and on non-payment in twenty-one days, may cause the same to be levied by distress and sale of goods. 20 G. 2. c. 19.

Disputes between masters and mistresses in husbandry, artificers, &c. how to be determined.

The act above concerns only hired servants in husbandry, and not apprentices or menial servants; therefore an indictment for retaining a servant without a testimonial was quashed, because it did not shew in what trade. 1 Mod. 78.

A ge-

12 Ann.

A general retainer of a servant shall be construed to be for a year. *Co. Litt.* 42. b.

The statute relating to servants stealing and purloining their masters goods to the value of 40s. which is felony, extends not to apprentices under eighteen years of age; tho' an apprentice or servant may be indicted of felony for stealing his master's goods at common law, notwithstanding the stat. 21 H. 8. *Hale's Hist. P. C.* 668. *part* 1.

Servants assaulting masters, &c. or overseers, to be committed.

Servants assaulting master, mistress, dame, or overseer, are to be committed to prison by two justices for one year or less, or to be bound over to the sessions, there to receive such open punishment as shall be thought convenient, life and member excepted, the said offence being proved before the said justices by the confession of the said servant, or by the oath of two witnesses.

Upon complaint made to any one justice of a servant, workman or labourer making an assault or affray upon his master, &c. he may bind the offender to his good behaviour, and so to the next sessions, and there he may be convicted and punished according to the statute.

If a master putteth away a servant, he must pay him his wages to the time he served; but if the servant quittance his service before the time agreed, he shall forfeit all his wages. *Dalt.* 186. *Lambard* 447.

If a servant come not according to his promise, or refuse to do his work, though he stay with him, this is a departure in law.

All offences against 5 *Eliz.* c. 4. may be punished at the quarter-sessions or special sessions.

An

An order, reciting that *W. R.* and *N. R.* were retained by one *L.* the king's gardner, at so much *per diem*, and that they worked with him so many days, and that so much was due to them, which *L.* was ordered to pay: this order being removed from *Hicks's ball* in *B. R.* was quashed; for the justices have only power to inforce payment of wages in husbandry, because they have power by the statute to settle such wages; it is true, where an order is for payment of wages generally, it shall be intended wages in husbandry; but upon the face of this order it appears to be otherwise, for gardning is not husbandry within the statute, being the making of ornamental walks, and not for profit.

2 *Salk.* 442. 6 *Mod.* 204.

All the provisions and regulations relating to servants in husbandry, handicraftsmen, miners, colliers, &c. shall extend to tanners and miners employed in the stannaries of *Devon* and *Cornwall*, as fully as if the same were herein particularly set forth.

Regulations of servants to extend to the stannaries in Cornwall.

Nothing shall be construed to restrain any person from applying in the same manner, as before this act was made, to the stannary courts, or to the warden, vice-warden or steward of the stannaries, in relation to any matters herein before-mentioned. *Stat.* 28 G. 2.

See Apprentices.

Settlements.

Settlements.

How settlements are gained.

FIRST, by inheritance, as when a child gains a settlement in a parish, because his father was there settled; secondly, by birth; and thirdly, by commorancy.

As to the first, if the father has a legal settlement, the child is settled where the father is; and if the father has no legal settlement, then the child regularly gains a settlement in the parish where born. 2 *Bulst.* 351.

If a woman with child be sent to the house of correction, and is delivered, the child shall not gain a settlement where the house of correction is, but in the parish where the mother dwelt when sent to the house of correction. *Salk.* 121.

And persons whose interest in houses or lands is determined, cannot be put out of the town where they were legally settled, neither can they be sent to the place of their birth or last habitation; but if they wander and beg, then they may be taken up, and sent to the place of their birth. *Dalt.* 158.

Settlement by commorancy is, where a person continues in some other place than where he was born, before legally settled; and such continuation makes a legal settlement.

Formerly every one who was settled as a native, householder, apprentice, or servant for a month, without just cause to remove him,

him, was held to be lawfully settled: but now this month hath been altered to forty days, where a person shall come into a parish, and rent a tenement under 10*l.* a year; and several other alterations are made by the stat. 3 & 4 *W. & M. c. 11.* The forty days notice must be delivered to the churchwardens, and the forty days shall be accounted from the publication of notice in writing in the church of any person coming to inhabit in any parish; and churchwardens and overseers neglecting to give such notice the next *Sunday* after received, to register the same, forfeit 40*s.*

Forty days a settlement, how to be accounted.

Notice must be to churchwardens, &c.

Renting a house a year, or a man's executing on his own account any publick annual office for one year, or paying taxes, rates or assessments of the parish: but scavengers rates and to the highways are excepted by stat. 9 *G. 1. c. 11.*

A person serving an apprenticeship and inhabiting in a town, or unmarried person not having a child, being hired for a year, and continuing in the service for a year, any of these will make a legal settlement. 3 & 4 *W. & M.*

Apprenticeship or yearly servant, a settlement.

A person who is a lodger, yet the servant gains a settlement; nor does the settlement depend on his master, as that of a wife on her husband; but he gains a settlement for himself within the 13 & 14 *Car. 2.* by forty days inhabitation.

Servant to a lodger, a settlement.

Any person bound apprentice, or being a hired servant to one who came into a parish by a certificate, shall not gain a settlement. 12 *Ann. c. 18.*

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But

Apprentice to
a certificate
man assigned
over to ano-
ther, a settle-
ment.

But a certificate man took an apprentice, and afterwards assigned him for the remainder of his time to another person in another parish, whom he served accordingly; and it was held by the court, that this gained him a settlement. *The king and The inhabitants of Petham, Mich. 14 G. 2.*

How children
gain settle-
ments.

Children gain a settlement by birth in no case, but where the settlement of their father or mother is not known (except only in cases of bastardy, *see p. 31, &c.*) till the legal settlement is known, and no longer; and the reason is, because the children should not be vagrants. *Trin. 9 G. 1. St. Giles's parish in Reading.*

A hired servant marries within the year, and continues the year, held a good service within the statute.

Marrying within the year a good cause to turn him away; but if continued, he gains a settlement. *Parish of St. Saviour against St. Dionis Backchurch.*

Coming into a parish publicly, and taking a house, and being rated to the poor, and so observed by the officers of the parish, is a sufficient notice, though no notice in writing was given to the churchwardens. *Pasc. 1 W. & M. B. R. 12 Ann.*

A pass to remove a person from one parish to another.

To the churchwardens and overseers of the poor of the parish of St. Mary, Islington, in the county of Middlesex, and to the churchwardens and overseers of the poor of the parish of St. James, Clerkenwell, in the said county.

Middlesex, } **W**HEREAS complaint hath
to wit, } been made by you the
churchwardens and overseers of the poor of
the said parish of *St. Mary, Islington*, unto us,
whose hands and seals are hereunto set, two
of his majesty's justices of the peace (whereof
one is of the *quorum*) for the county afore-
said, that *W. Day* lately intruded himself into
your said parish of *St. Mary, Islington*, there
to inhabit as a parishioner, contrary to the
laws relating to the settlement of the poor,
and is there likely to become chargeable, if
not timely prevented. And whereas upon
due examination and inquiry made into the
premisses it appears unto us, that the said
W. Day is likely to become chargeable unto
the said parish of *St. Mary, Islington*, and that
the last place of settlement of the said *W. Day*
is in the parish of *St. James, Clerkenwell*:
These are therefore in his majesty's name to
order and require you the said churchwardens
and overseers of the poor of the parish of *St.*
Mary, Islington aforesaid, that you, or some
of you, do forthwith remove and convey the
said *W. Day* from your said parish of *St.*

Settlements.

Mary, Islington, to the said parish of *St. James, Clerkenwell*, and him deliver to the churchwardens or overseers of the poor there, or some or one of them, together with this our warrant or order, or a true copy thereof, whereby they are likewise required in his majesty's name, and by virtue of the statutes in such case made, forthwith to receive the said *W. Day* into their said parish, and provide for him as their own parishioner. Given under our hands and seals the 21st day of *Oct.* in the year of our Lord 1751.

The examination thereupon.

Middlesex, } **T**HE examination of *W. Day*
to wit, } touching the last place of
 his legal settlement, says upon oath,

That he was born in the parish of *St. James, Clerkenwell*, in the county of *Middlesex*, and that he lived and served with one *Joseph Nicol*, a farmer in the said parish, as a hired servant, for the space of one whole year at one intire hiring, at the yearly wages of 3*l.* and that he was at the time of such hiring an unmarried man, and since hath not been a yearly hired servant, rented any house, paid to the poor, or done any act whereby to gain any legal settlement in any parish or place whatsoever, save as aforesaid.

Taken, signed and sworn,
 this 21st day of *October*
 1751, before us

The mark of
W. † Day.

R. C.
W. W.

Where

Where any poor person shall remove from one parish to another, and in the parish to which he removes shall rent a tenement under 10*l.* *per annum*, the churchwardens and overseers of the poor, within forty days, by warrant from two justices on complaint made by such churchwardens, &c. may remove him to the place where he was settled for forty days, unless he give security to discharge the parish.

Stat. 13 & 14
Car. 2.

Settlement passes.

AN order of removal of two justices to remove the father and mother, and *John, Elizabeth* and *Sarah*, their children, from the parish of *S.* quashed, because it did not set forth the respective ages of their children; for they might be apprentices, or serve for a year, and so gain a settlement elsewhere; for this reason it was quashed as to the children, but good as to the father and mother. *The king against Trinity parish in Chester, Mich. 11 G. 1.*

The most regular way for the justices to proceed upon the 14 *Car. 2.* in removing a poor person, is to make a record of the complaint and adjudication, and upon that to make a warrant under their hands and seals to the churchwardens, to convey the persons to the parish to which they ought to be sent, and deliver in the record *per proprias manus* into court the next sessions. *Salk. 406.*

A general order to remove a man and his family not good. *Ibid. 479, 482.*

If any by indirect means hinder a poor man from hiring a house, he may be indicted; and it is finable to remove or put out any one of the parish, who ought not to be put out. *Dalt.* 98.

If a woman marries a *Scotchman* who had gained no settlement in *England*, the settlement which she had in her own right does still continue, notwithstanding the marriage. *Mich.* 1713.

So a woman marrying an *Irishman*, she continued her former settlement. But see the case of *Stretford and Norton*, *Hil.* 12 G. 2. where it was held that a woman's settlement is suspended during her marriage, therefore if she marries a foreigner, she cannot in his life-time be sent to her own settlement. *Seff. Cases*, 2 vol. 323.

A poor person hired for a year to work at spinning at 1s. 6d. a stone, but not obliged to live with her master, yet held a good settlement. *The king against The inhabitants of Campden*, 13 & 14 G. 2.

A man has a child married elsewhere, he hires himself for a year, and serves the year; and held the man, notwithstanding he had a child, gained a settlement by virtue of his service; he is a single person within the meaning of the act, though not expressly within the letter of it. *The parish of St. Anthony and Cardigan*.

If the mother gains a settlement after the father's death, children shall follow it, and be settled where the mother is. *St. George's parish against St. Katherine's*, 1 G. 1. B. R.

An apprentice served his time with one who came into the parish by certificate, this is a good settlement: also where a lodger hires a servant for a year, and he serves the year, this is a good settlement. *Ld. Fortesc.* 315. *St. Giles* and *Weybridge*. Though the 9 & 10 *W.* 3. says, that nothing shall gain a settlement to a certificate man, but renting a tenement of 10*l.* a year, or executing some parish office.

A cobbler took a stall in *St. O.* just big enough for himself to sit in, and took an apprentice, who served him in the street and ran of his errands six months; and the master and apprentice lodged out of *St. O.* each in different parishes; the sessions adjudged this a good settlement in *St. O.*

Apprentice to a cobbler in a stall, gains a settlement.

My lord *Coke*; That where a house stands in two lets, the owner is resident where his bed stands; inhabitancy is a qualification requisite for an apprentice to gain a settlement; order quashed by the court. 3 *G.* 1. *B. R.*

Where one was bound apprentice by indenture, and his master within two years afterwards broke; and then the apprentice, by and with the leave of his master, was hired in another parish for a year, and served a whole year; he is settled in the first parish; for the indenture cannot be discharged but by deed, or by the sessions; and the hiring after he is bound, or any consequences arising upon such hiring, are intirely void while the indenture subsists; for when an apprentice serves forty days, by virtue of the indenture he cannot gain another settlement, tho' his master consents, because he had a settle-

Apprentice serves 40 days by indenture, how settled.

ment by the service under the indenture. *Pasch. 10 G. 1. 1 Mod. Cases 235. 2 Ld. Raym. 1352.*

Man settled in a parish with children, afterwards removed to another; how settled.

A poor man lawfully settled in a parish, had several children born; afterwards he and his wife and children went into another parish, and gained a settlement there; and being likely to be chargeable, it was disputed where the children should be provided for; and held, that the children must be settled in the second parish, and not as nurse-children, but as part of his family. *Cumber and Milton parish, Salk. 429.*

If the father had been dead, and the mother had married a second husband, settled in a third parish, in such case her children by her first husband must go with her as nurse-children, and not as part of her family; for this accidental settlement of their mother by marrying a second husband, shall not gain a settlement of her children by her first husband. *Ibid.*

A. marries B. a widow, the children by her first husband shall be sent to her, being under seven years of age, and shall continue with her till that age. *Ca. in B. R. 60.*

The age of a nurse-child, so as to go along with its mother, is until seven, agreed by all the court. *Cripplegate and St. Saviour's Southwark, 8 Ann. B. R.*

A permissive pass for a poor person.

Middlesex, } THESE are to desire you,
to wit, } and every of you, to permit and suffer the bearer hereof, *Barbara Blackburn,*

Blackburn, a poor woman, with her son *Robert*, aged about fifteen years, peaceably and quietly to pass unto *Cowland* in *Lincolnshire*, where they belong, relieving them according to their necessity, without any let, hindrance or molestation whatsoever, they demeaning themselves orderly, keeping the post-road, and not exceeding the space of fifteen days from the date hereof, to accomplish their said journey. Given under my hand and seal, being one of his majesty's justices of the peace for the said county, the 31st day of *October* in the twenty-fifth year of the reign of our sovereign lord *George* the second, by the grace of God of *Great Britain, France* and *Ireland* king, defender of the faith, and in the year of our Lord 1751.

*To all justices of the peace,
mayors, sheriffs, bailiffs,
constables, and all others
his majesty's officers whom
these may concern.*

I do not find that any one or more justices of the peace may or can, in any other case, license a man to beg or ask alms, but in the following cases; to such as suffer shipwreck, and soldiers and mariners coming from the seas, to pass from place to place; and these two are the only cases in which the law tolerateth them to ask and receive relief as aforesaid. *Dalt. 209. 1 Jac. 1. c. 25.*

An

An order to remove one to the place of his last legal settlement, who has been warned to go out, and has refused, or neglected so to do.

May be by
churchwar-
dens or over-
seers.

Quorum re-
pealed.

Middlesex, } **W**HEREAS complaint hath
to wit, } been made unto us, two
of his majesty's justices of the peace for the
said county (whereof one is of the *quorum*)
by the churchwardens (or the overseers of the
poor) of the parish of *St. Mary, Islington*, that
A. B. in *May* last, being legally settled as a
native, householder, sojourner, apprentice or
servant (*as the case is*) in the parish of *St.*
Mary le Strand in the said county, is now
come into the parish of *St. M. I.* endeavour-
ing to settle himself as an inhabitant thereof,
and doth not rent the value of *10*l.* per ann.*
there, nor hath within forty days last past
given or delivered, either to the churchwar-
dens or overseers of the poor of the said pa-
rish, any notice in writing of the house of his
abode, and the number of his family, but is
likely to become chargeable to the said pa-
rish, contrary to the form of the statutes in
that case made and provided; (And being
required by a warrant under the hands and
seals of two of his majesty's justices of the
peace for the said county, to depart out of
and from the said parish of *St. M. I.* or other-
wise to give sufficient security not to become
chargeable to the said parish, or shew good
cause to the contrary, hath refused or ne-
glected so to do): These are therefore in his
majesty's

majesty's name to charge and command you, that you, some or one of you, do forthwith remove and convey the said *A. B.* from the said parish of *St. M. I.* unto the said parish of *St. M. le S.* which on examination we do adjudge to be the place of his last legal settlement, and to deliver him to the churchwardens and overseers of the poor there, or to some or one of them (together with this precept, or a true copy thereof) who are hereby required to receive and provide for him as a settled inhabitant there, until they shall otherwise be discharged thereof according to law: hereof fail not at your peril. Given under our hands and seals the 27th day of *December* 1751.

This is when he was warned out before.

Statutes relating to settlements are 13 *Car.* 2. c. 12. 3 *Car.* 4 *W.* 3 *M.* c. 11. 8 *Car.* 9 *W.* 3. c. 30. 12 *Ann.* c. 18.

An order for the removal of a poor person was quashed, because there was no judgment of the justices concerning the last legal settlement, but only the oath of a woman. *Salk.* 485.

If a master put away his servant, he must pay him his wages to the time he served; though if the servant go away from his service before the end of the time agreed, he shall forfeit his wages. *Dalb.* 129. And if he refuses to do his business, it is a departure in law, although he go not away. *Noy's Maxims*, Servants. See 5 *Rep.* 14.

Certificate

Certificate passes.

*A certificate of a man being a parishioner
in a parish.*

*To the churchwardens and overseers of the
poor, &c.*

Middlesex, } **WE** the churchwardens and
to wit, } overseers of the poor of
the parish of *S.* in the county aforesaid, do
hereby own and acknowledge *A. B.* labourer,
and *E.* his wife, to be both inhabitants legally
settled in our said parish of *S.* In Witness
whereof we the said churchwardens and over-
seers have hereunto respectively set our hands
and seals this 10th day of *March* in the 25th
year of the reign of our sovereign lord *George*
the second, by the grace of God of *Great*
Britain, France and Ireland king, defender
of the faith, &c. and in the year of our Lord
1751.

Attested by

L. P. } churchwardens.

C. D. }

N. O. } overseers.

W. T. }

Witnesses who attest certificates, or one of
them, must make oath before the justices,
that such witness did see the churchwardens
and overseers severally sign and seal the said
certificates, and that the names of such wit-
nesses are of their own hand-writing. *Stat.*

3 G. 2. c. 1.

The

The justice's certificate pursuant thereunto.

To the churchwardens and overseers of the poor of the parish of L. in the county of M. or to any or either of them.

WE whose names are hereunto subscribed, two of his majesty's justices of the peace for the county of *M.* aforesaid, do allow of the above written certificate; and we do also certify, that *J. R.* the witness who attested the execution of the said certificate, hath made oath before us, that he did see the churchwardens and overseers, whose names and seals are to the said certificate subscribed and set, severally sign and seal the said certificate; and that the names of the said whose names are above subscribed as witnesses to the execution of the said certificate, are of their own proper hand-writing. Dated the 11th day of *March* in the year of our Lord 1752.

A pass to remove a person coming into a parish by certificate.

To the churchwardens and overseers of the poor of the parish of S. in the said county; and to the churchwardens and overseers of the poor in the parish of R. in the county of S.

Middlesex, } **W**HEREAS *J. P.* for some Stat. 3 G. 2.
to wit, } time dwelt in the said
 parish of *S.* being allowed so to do by reason
 2 of

of a certificate bearing date the day of *March*, under the hands and seals of the churchwardens and overseers of the poor of the said parish of *R.* attested by *W. S.* and *C. D.* and allowed by *T. P.* and *P. H.* two of his majesty's justices of the peace for the said county, according to the directions of the several acts of parliament in that behalf made and provided: now the said *J. P.* being reduced to great poverty, hath lately applied to the present churchwardens and overseers of the poor of the said parish of *R.* for relief, who refused to give him any, but say they are willing to receive him whenever he shall be sent to them; insomuch, that the said *J. P.* is become chargeable to the said parish of *S.* These are therefore in his majesty's name to command you, or either of you, forthwith to remove and convey the said *J. P.* from the said parish of *S.* to the parish of *R.* in the county of *K.* (that being adjudged by us, upon examination of the said *J. P.* taken upon oath before us, to be the place of his last legal settlement) and deliver him to the churchwardens and overseers of the poor there, or to some or one of them, together with this precept, or a true copy hereof, who are hereby required to receive and provide for him as a settled inhabitant there, until he shall be otherwise discharged thereof according to law: hereof fail not at your peril. Given under our hands and seals this 10th day of *March*, and in the year of our Lord 1752.

A certi-

A certificate man not removable till he becomes chargeable. *The king against Strife-stead, Mich. 3 G. 2. in B. R. 2 Salk. 530.*

Persons carrying with them a certificate from the minister, one churchwarden and overseer, of having a dwelling-house in their parish, and of their being inhabitants there, may go into any other place to work; and in such case, if the persons do not return again to their habitations when their work is done, or if they fall sick while they are at work, it shall not be deemed a settlement, but may be removed by two justices to their legal place of abode. Churchwardens, &c. refusing to receive such persons, and to provide for them, one justice may bind over such officers for their contempt to the quarter-sessions or assize. *Stat. 9 & 10 W. 3. 12 Ann. c. 28.*

Poor, &c.

Assessment for the poor.

It in the county of } AN assessment made
Middlesex, to wit, } A on the inhabitants
of the parish aforesaid, for and towards the
necessary relief of the poor thereof for the
present year, commencing from, &c.

R. W. } churchwardens.
S. L. }

E. T. } overseers.
L. O. }

A con-

Settlements.

A confirmation of the rates by the inhabitants.

WE whose names are subscribed to this assessment, being inhabitants of the parish aforesaid, have seen and perused the same, and the several sums abovementioned are by our approbation rated upon the respective persons according to the best of our judgment.

Witness our hands,

T. P. R. C. D. R.

A confirmation by two justices.

RATIFIED and allowed by us, two of his majesty's justices of the peace for the county aforesaid.

Another form of rate or assessment for the poor.

A. in com' } A RATE and assessment made
B. to wit, } this day, &c. on the inhabitants of the parish of *A.* aforesaid, for and towards the relief of the poor there, for the year, &c. or being the first or second further rate for the relief of the poor of the said parish for the year 1755, at 9*d.* in the pound.

	s.	d.
<i>A. B.</i> gentleman,	10	0
<i>C. D.</i> yeoman,	5	0
<i>E. F.</i> merchant,	7	6
<i>G. H.</i> linen-draper,	6	0

J. K. churchwarden.

*L. M. }
N. O. }* overseers.

WE

WE whose names are under written, being inhabitants of the parish of *A.* aforesaid, have perused the above rate and assessment, and do hereby declare, that the several sums abovementioned are by our approbation rated upon the respective persons concerned, and that the same is an equal rate according to the best of our judgments.

P. Q. }
R. L. } parishioners.
A. M. }

Memorandum. This day, &c. the above rate and assessment was ratified and allowed by us, two of his majesty's justices of the peace for the county aforesaid.

T. O.
L. C.

In the large parishes in and about *London* and *Westminster* they have usually a collecting book for the poors rate in the following form :

Westminster, } **A** RATE or assessment of
to wit, } 6*d.* in the pound, made
the day, &c. being *Easter Tuesday*, in the
year of our Lord 1753, for and towards the
relief of the poor of the parish of, &c. in the
liberty of the city of *Westminster* aforesaid and
county of *Middlesex*, for the said year 1753,
by the churchwardens and overseers of the
poor of the said parish, by and with the as-
sent of two of his majesty's justices of the
A 2 peace

Settlements.

peace for the said city and liberty (of whom one is of the *quorum*) according to the statute in that case made and provided. (The word *quorum* repealed by the stat. 26 G. 2.)

J. K. churchwarden.

L. M. overseers of the poor.

If there be a select vestry, some of them, and such of the ancient inhabitants as are present at making the rate, sign here

Inhabitants.

The above is to be inserted in the first page of your collecting book.

Then begin a new leaf, thus :

Rents.	Inhabitants names.	Rates.		
<i>l.</i>		<i>l.</i>	<i>s.</i>	<i>d.</i>
40	A. B. esquire.	1	0	0
37	Mr. C. D.	0	18	6
25	Mr. E. F.	0	12	0

In this manner set down the names of the several parishioners, the rents they pay, and the sums they are assessed, according to the above rate, and then, beginning a new page, you make a summary account of the rents and rates, being the sum total of each page, as follows :

Account of the foregoing Rents and Rates.

	<i>l.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Folio 1. 145	10	18	11	9
Folio 2. 908	15	22	14	4½

And so of the rest.

On

On a new leaf draw up the confirmation of the justices in this manner :

Westminster in the } **W**E whose names are
county of Middle- } hereunto subscri-
sex, to wit, } bed, two of his majesty's
 justices of the peace for the city and liberty
 aforesaid (one of us being of the *quorum*)
 have seen and perused the foregoing rate and
 assessment for the poor of the parish of, &c.
 and do hereby confirm and allow the same,
 and appoint you *E. F.* and *G. H.* two house-
 holders of the said parish, to collect and ga-
 ther the same, and render an account thereof
 according to law. Given under our hands
 and seals the day of 1753.

Note; Duplicates are kept of all collect-
 ing books.

The rate being confirmed, if any person
 shall refuse to pay, &c. to be levied by di-
 stress.

By the statute the poors rate ought to be
 assessed monthly, and not quarterly, &c. for
 otherwise a man cannot remove in the mid-
 dle of the quarter, but he will be twice
 rated; nor can a distress be taken by a ge-
 neral warrant made at the time of the rate,
 but there must be a special warrant; neither
 can it be taken for a quarter before ended,
 if the custom is to rate quarterly. 2 *Salk.*
 532.

See Overseers of the poor.

Warrant to distress for the poor's rate.

*To the churchwardens and overseers of the
poor of the parish of St. J. C. in the said
county.*

Stat. 43 Eliz.
c. 2.

Middlesex, } **F**ORASMUCH as complaint
to wit, } hath been made by you unto
us, two of his majesty's justices of the peace
for the said county, that several persons here-
under named have refused to pay unto you
the several sums of money adjoined to their
several names, being assessed upon them se-
verally, for and towards the necessary relief
of the poor of the said parish (according to
the form of the statute in that case made and
provided): These are therefore in his maje-
sty's name to require and authorize you, that
you, some or one of you, do forthwith levy
the said several and respective sums of mo-
ney by distress and sale of the several and re-
spective goods of the said offenders; render-
ing to the parties the overplus, if any be,
unless such sums, together with the reason-
able charges of taking and keeping the same,
be paid within days, pursuant to the sta-
tute in such case made and provided; and in
default of such distress, that then you, some
or one of you, do certify the same unto us,
to the end that there may be further pro-
ceedings touching the premisses, as to justice
doth appertain. Given under our hands and
seals this 21st day of Sept. 1751.

A. B. 21s. C. D. 1s. 6d. E. F. 1s. 4d.

Not

Not to be less than four, or more than eight days. *Stat. 27 G. 2.*

See *Distresses.*

Warrant for non-payment, according to the statute.

To the keeper of his majesty's gaol of Newgate.

Middlesex, } **W**HEREAS *A. L.* in the
to wit, } parish of *St. J.* in the said
county, was and is lawfully and duly assessed
the sum of 21*s.* 4*d.* for and towards the ne-
cessary relief of the said parish, and hath re-
fused to pay the same, and the same is still
due and in arrear; and thereupon a warrant
was directed to the churchwardens and over-
seers of the poor of the said parish, under
the hands and seals of two of his majesty's
justices of the peace for the said county, to
levy the same by distress and sale of the
goods of the said *A. L.* And whereas it ap-
peareth unto us upon oath, that no distress
can be had to levy the same; and the said
A. L. doth still refuse to pay the said 21*s.* 4*d.*
so in arrear: We therefore herewith send you
the body of the said *A. L.* commanding you
the said keeper to receive him into your cu-
stody, there to remain without bail or main-
prize, until he pay the said sum of 21*s.* 4*d.*
Given under our hands and seals this 23d
day of *September* 1751.

Certificate persons.

A Certificate person, who shall be legally placed in, and execute some annual office, or *bona fide* take a lease of 10*l. per ann.* shall gain a legal settlement therein. *Stat. 9 & 10 W. 3. c. 11.*

No person to gain a settlement by any purchase under 30*l.*

No person, by virtue of any purchase of any estate, if the consideration thereof did not amount to 30*l. bona fide* paid, shall acquire a settlement in any parish for any longer than he dwells on the estate purchased; but shall be liable to be removed to the place where last settled. *Stat. 9 G. 1. c. 7.*

It is a rule, that all settlements are expounded favourably, liberally, and most beneficially for poor people.

A master cannot turn off his servant two or three days before the year expires; if he does, the service in point of law continues, and gains a settlement notwithstanding; and so adjudged. *Stat. 13 & 14 Car. 2.*

Churchwardens and overseers of the poor refusing to receive persons removed from one parish to another, may be bound over to the sessions, and indicted for a contempt, and forfeit 5*l.* by the stat. 3 & 4 *W. & M.*

Overseers removing certificate persons, charges to be paid.

And when overseers of the poor of any parish remove back certificate persons, they shall be reimbursed the charges of maintaining and removing them, being ascertained by a justice of the peace, by the churchwardens or overseers of the poor of the parish to which removed. *Stat. 3 G. 2. c. 29.*

On

On default of payment, the same to be levied by distress and sale of their goods, by virtue of the justice's warrant.

Notice by the churchwardens of appeal to the sessions, on a removal by justices.

To the churchwardens and overseers of the poor of the parish of I. in the said county.

Middlesex, } **T**HIS is to inform you, and to wit, } every of you, that we the churchwardens and overseers of the poor of the parish of *K.* in the county aforesaid, do intend, at the next quarter-sessions of the peace to be holden for the said county of *Middlesex*, to commence and prosecute an appeal against you the churchwardens and overseers of the said parish of *I.* for and concerning the unjust removal of *A. B.* from the said parish of *I.* to our parish of *K.* of which you are to take this notice. Witness our hands, &c.

No appeal shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers making such appeal. *Stat. 9 G. 1.*

If the appeal be determined in favour of the appellants, the money expended for the relief of the poor person between the time of removal and determination of the appeal, to be paid to the appellants, according to the *stat. 9 W. 3.*

A petition of appeal against an order of removal.

To the worshipful his majesty's justices of the peace for the county of Middlesex in their general quarter-sessions assembled.

The humble petition and appeal of the churchwardens and overseers of the poor of the parish of I. in the city of London,

Sheweth,

Appeal to an order of removal.

THAT by virtue of an order or pass warrant under the hands and seals of *R. C.* and *J. F.* esquires, two of his majesty's justices of the peace for the county of *Middlesex* (whereof one is of the *quorum*) bearing date the second day of *July* 1752, *J. C.* and *S.* his wife, and *W.* aged about seven years, *C.* about five, and *J.* about one year, children of the said *C.* and *S.* his wife, were removed from the parish of *S.* at *C.* in the county of *Middlesex*, unto the said parish of *C. London*, alledging the said parish of *C.* to be the place of their last settlement.

That your petitioners conceiving themselves aggrieved by the said warrant or order of the said two justices, do therefore appeal to your worships therefrom, and humbly pray that you will be pleased to hear them in the premisses, and order that the churchwardens and overseers of the poor of the

the

the said parish of C. in the county of *Middlesex* may appear before you at a certain day to be appointed, to hear and abide the judgment and determination of your worships touching the appeal.

And your petitioners shall pray, &c.

C. B. agent for the appellants.

Order of sessions indorsed.

Middlesex. *At the general quarter-sessions of our sovereign lord the king, holden for the county of Middlesex at Hicks's hall in St. John's street in the county aforesaid, on Monday the day of J. in the 25th year of our sovereign lord George the second, king of Great Britain, &c.*

IT is ordered by this court, that the church-wardens and overseers of the poor of the parish of *J.* in this county, have notice of this appeal, and that they and all persons concerned do attend this court on *Thursday* next at nine of the clock in the forenoon, to hear and abide the judgment and determination of this court touching this appeal.

A notice

A notice to produce the pauper.

To Mr. C. B. agent for the appellants.

The parish of I. in the city of London, appellants, against The parish of S. in the county of Middlesex, respondents.

Notice to produce the pauper.

YOU are hereby desired to produce, at the hearing of this appeal, J. C. the elder, the pauper in the petition of appeal mentioned, in order to his being examined at the hearing of the said appeal on *Thursday* next. Dated the day of J. 1753.

M. R. agent for the respondents.

Appeals.

APPEALS may be adjourned from one quarter-sessions to another, and a sessions may adjourn from one day to another, and so fit by their adjournment. 2 Salk. 605. *Cases in B. R. 260.*

How appeals are to be brought.

Appeals may be brought to the quarter-sessions by any grieved with any rate or tax, or other act done by churchwardens and other persons, or by justices of the peace, where by law the benefit of an appeal is given.

Justices, upon an appeal in their general or quarter sessions concerning the settlement of any poor, or upon proof made of notice of such appeal given, though not afterwards prosecuted, shall order to the party for whom the appeal shall be determined, or to whom
such

such notice was given, such costs and charges in the law, as they shall think reasonable.

Stat. 8 & 9 W. 3.

If the person ordered to pay such costs live out of the jurisdiction of the court, any justice of the county, &c. where he lives, on producing of a copy of the said order, and proving the same by one credible witness, by warrant under his hand and seal is to cause the money mentioned in the order to be levied by distress and sale of the goods of the person ordered to pay; and if no distress can be had, may commit such person to the common gaol for twenty days. *Ibid.*

Costs of appeals, how to be paid.

No appeal lies from a corporation to the quarter-sessions of the county. The case of the corporation of *Plympton*: the chief justice said, that the act of parliament is express, that the justices of corporations in sessions shall have the same power as justices of the county, and therefore an appeal must be to them. *The queen against Waddon, Pasc. 13 Ann. B. R.*

No appeals from corporations to quarter-sessions of the county.

All appeals must be determined at the sessions in that county or place wherein the parish doth lie, from whence the poor man is removed, and not elsewhere.

To be determined in the county from whence the person was removed.

An overseer had his accounts allowed and confirmed, several years afterwards the parish appeals against his accounts: the statutes being silent as to the time, the parish may appeal at any time.

The next sessions after an order made and an appeal brought, adjourned the appeal to the next sessions following, and then they made

When appeals
are to be
brought.

made an order; and upon a motion to quash it, for that the appeal ought to be determined the very next sessions, and not at an adjourned sessions, it was adjudged that the appeal must be lodged at the next sessions, but may be determined at an adjourned sessions. *Salk.* 605.

The sessions, in cases of removals, have no jurisdiction but upon an appeal.

An exception was taken to an order for settling a poor man, that he did not rent a house of 10 *l.* a year: the chief justice said, that most of the orders since the 13 *Car.* 2. have been so, and though it may have been better, if it had been added, that he was likely to become chargeable to the parish, yet, since the precedents have been so, we will not alter it.

Another exception was taken, that it was not said that the complaint was not made by the churchwardens, and that was fatal; for that justices of the peace cannot remove a man without it; and though it is said in the order, that complaint was made, yet, since it is not said by the inhabitants or churchwardens of the parish, it is ill; so the order was quashed. *Micb.* 2 *W.* 3. *B. R.* *The king against The inhabitants of Marlborough.* *Salk.* 492. 3 *Salk.* 254. 5 *Mod.* 149. *Cases in B. R.* 89.

Warrant

Warrant to remove a woman and six children out of the parish to another parish.

Middlesex, } **W**HEREAS complaint has
to wit, } been made unto us, two
of his majesty's justices of the peace for the
county of *M.* (one being of the *quorum*) by
the churchwardens and overseers of the poor
of the parish of *St. Mary, Islington*, in the said
county, that *M. S.* wife of *M. S.* (who is now
a prisoner in *Clerkenwell Bridewell*) and their
six children, viz. *William*, aged almost fif-
teen years; *Margaret*, aged about twelve
years; *Susannab*, aged nine years; *Roger*,
aged about seven years; *Martha*, aged about
four years; and *Mary*, aged almost twelve
Months, lately came into your said parish,
endeavouring to settle there contrary to law:
and it appeareth unto us the said justices, and
we do adjudge that they are likely to be-
come chargeable to the said parish; and
upon examination of the said *W. S.* taken
upon oath, it farther appeareth unto us, and
we do likewise adjudge, that the parish of *S.*
in the said county is the place of the last le-
gal settlement of the said *W. S.* and his said
wife and six children: These are therefore in
his majesty's name to charge and command
the churchwardens and overseers of the poor
of the said parish, forthwith to remove and
convey the said *M. S.* and said six children,
from the said parish of *St. Mary, Islington*, to
the said parish of *S.* and deliver them to the
churchwardens and overseers of the poor there,
or

or to some or one of them, who are hereby required to provide for them according to law. Given under our hands and seals the 30th day of December 1751.

To the churchwardens and overseers of the poor of the respective parishes of St. Mary, Hillington, in the county of Middlesex, and St. Mary le Strand, in the said county, and to all other officers whom it may concern.

Examination.

*Middlesex, } W. S. maketh oath, that about
to wit, } twenty years since (being at
that time a single man) he became a servant
hired by the year to one R. P. a barber and
peruke-maker, in the parish of S. in the
county of Middlesex, at about 12*l.* by the
year wages, where and with whom he lived
one whole year; that about two years since
this examinant (having at that time a wife
and five children) applied to the overseers of
the poor of the said parish of S. for a small
sum of money to put him into business, who
thereupon went with this examinant to B.
street, to look at a house there for this exa-
minant, which he took of one Mr. R. and
agreed to pay 10*l.* 10*s.* by the year rent for
the same; and the overseers gave this exa-
minant the sum of 5*l.* That he lived in the
said house about a month or five weeks and
longer, to the best of his knowledge; that
he*

he never was an householder at 10*l*. by the year rent, save as above, or paid any parish taxes in any place; that he hath a wife, named *M.* to whom he was married about sixteen years since, by whom he hath six children, viz. *William*, aged fifteen years, who never was an apprentice, or servant by the year; *Susannah*, aged about nine years; *Margaret*, aged about twelve years; *Roger*, aged about seven years; *Martha*, aged about four years; and *Mary*, aged almost twelve months.

Sworn the 24th day
of December 1751,
before us

J. H.
R. C.

Seamen. See Servants, p. 329.

Slander.

ACTION of slander lieth for defaming a person in his reputation, being no more than an action on the case for words, &c. And when words spoken affect a man's life or liberty, office, trade, or tend to loss of preferment in marriage, service, &c. or to his disinheritance, or which occasion any particular damage, this action may be brought: there are several divisions of actions of slander.

Action of slander, where it lieth.

First,

First, For charging a man with particular crimes.

Secondly, Slander of persons in their offices and professions.

Thirdly, Slandering a man's title to an estate.

Fourthly, Of defamation by libels.

Where any words are maliciously spoken of another, for which, if true, they would touch his life, or he might be punished, action of slander lies; as, to call a man traitor, robber, felon, &c. or charge him with the committing any of these crimes; or to say of one, if he might have his will, he would do such a thing, which thing is actionable. 4 Rep. fo. 12. 10 Rep. 130. Dyer 19.

To reproach a person with a heinous crime, as that he lay in wait to rob or murder any one, to charge a man with a rape, that he did ravish, or was guilty of ravishing a certain woman, or say, he should have been hanged for sodomy or buggery, &c. being very penal by the law, for these action lieth; the charging a person with stealing things, or as a receiver of stolen goods, are actionable; though the words must import a certain charge of felony, and not be of cutting and taking away standing corn, apples from trees, &c. This action of slander lieth for calling a person thief, unless something of qualification be coupled to prove the thing no felony; and for conspiring to indict a man falsely and maliciously of felony, or other offence, on his acquittal, &c. but not if it appears on the trial there was probable cause

cause for the indictment. 1 *Cro.* 329, 357.

1 *Bulst.* 112.

In case slander proceeds from a man's wife, If slander the husband and wife must be sued for it, from a man's wife, the husband and wife and not she alone; and for any scandal against the wife, he and she are to bring the action; but for words against both a man and his wife, the husband may prosecute one action for his slander, and he and the wife may afterwards sue another action for her's. *Cro. Jac.* 406. *Style* 113, 161.

When words are utterly uncertain, no *innuendo* or averment can make them good; and to these actions the defendant may plead the general issue, not guilty; or if the plaintiff declares on some of the words only, when all together they are not actionable, he may set them forth at large as he spoke them, and traverse or justify the whole, &c. Also if the defendant can make proof of the words, he may plead special justification; but if the plea be not good, damages will be aggravated. *Style* 70. *Raym.* 61. *Co. Entr.* 26.

Defamation may be made as well against a private man as against a magistrate; *non refert* whether the libel be true, or whether the party be of good fame or ill fame, for it inciteth all the same family to revenge, and so tendeth by consequence to the effusion of blood. 5 *Rep.* 125.

A defamation by libel, as by scandalous writing, &c. is likewise actionable; and printing or writing may be libellous, if the scandal is not charged in direct terms, but ironically, or though there be only the first and last letter of the name, if the jury will

B b

find

find it to point at a particular person, and the person who is the author or contriver, and the procurer and publisher of a libel, knowing it to be such, are all punishable, as are booksellers, &c. who sell libels, although they know not the contents thereof. *Moor* 862. 5 *Mod.* 167.

And a libeller shall be punished, though the party of whom the words are spoken is dead, and notwithstanding the matter of the libel is true; for it is not material whether it be true or false, if the prosecution be by way of indictment or information; but in an action on the case one may justify that it is true. *Hob.* 253. *Hardres* 470.

Sheriff.

THE sheriff on summons is obliged to attend the sessions of the peace, there to return his precepts, to take the charge of the prisoners, to receive fines for the king, and the like. 2 *Hawk.* 41.

No sheriff shall exercise the office of a justice of the peace in any county wherein he is sheriff, and in such case his acts, as a justice, shall be void.

If the sheriff shall die before his office shall expire, the under-sheriff shall execute the same in the deceased sheriff's name till a new sheriff shall be sworn, and shall be answerable for the execution thereof, as the deceased sheriff would have been. *Stat.* 3 *G.* 1. c. 15.

Ships.

Ships.

IF any owner of, or captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn or otherwise destroy the ship of which he is owner, or unto which he belongeth, or in any wise direct or procure the same to be done, with intent to prejudice any person that shall under-write any policy of insurance thereon, or any merchant that shall load goods thereon, he shall be guilty of felony without benefit of the clergy. *Stat. 11 G. 2. c. 29.* Destroying or casting away a ship, felony.

If any person shall plunder any ship in distress, or wilfully do any thing tending to the immediate loss of such ship, he shall be guilty of felony without the benefit of the clergy. *Stat. 12 Ann. and 26 G. 2. c. 29.* Plundering a ship, felony.

All persons who shall feloniously steal any goods of the value of 40*s.* in any ship, boat, or vessel, on any navigable river, or in port of entry or discharge, or from any wharf or key, or shall be present and assisting therein, shall be guilty of felony without the benefit of the clergy. *Stat. 24 G. 2. c. 45.* Stealing goods out of a ship to the value of 40*s.* felony.

No person to act as pilot on the *Thames* (except in collier ships) without licence from the master and wardens of *Trinity-house*, on pain of forfeiting 20*l.* and pilots shall be subject to the government of that corporation, and pay 1*s.* in the pound out of wages, for the use of the poor; and misbehaving, their warrants may be recalled. *Stat. 5 G. 2. c. 20.*

Smugglers.

A warrant to bring offenders before a justice upon the smuggling act of the 9th of G. 2.

To all constables, and others his majesty's officers of the peace for the said county.

Essex, } **W**HEREAS I have been into wit, } formed upon oath, that since the 24th day of June 1736, *A. B.* of, &c. *C. D.* of, &c. and *E. F.* of, &c. have been assembled together for the purpose of clandestine landing and running of prohibited or uncustomed goods, and were armed with fire-arms and other offensive weapons, contrary to the form of the statute in that case lately made and provided: These are therefore in his majesty's name to require you to apprehend and bring the said *A. B.* *C. D.* and *E. F.* before me, or some other justice of the peace for this county, to answer the premises aforesaid. Given under my hand and seal this day of in the year of our Lord 1754.

Persons to the number of three or more, assembled and armed to be assisting in running of goods, adjudged guilty of felony, and to be transported. Also two or more persons in company found passing within five miles from the sea coast with any horse or cart, whereon are put more than six pounds of tea or five gallons of brandy, or other foreign goods above 30*l.* value, landed without entry,

entry, not having a permit, and shall carry any offensive weapons, guilty of felony, and such goods forfeited. *Stat. 9 G. 2.*

If three persons or more armed shall be assembled to assist in the illegal exportation or running of goods, or rescuing the same, or if any person shall wear any disguise when passing with such goods; or shall forcibly hinder any officer in attempting to go on board any vessel, or shoot or maim or wound him when on board, guilty of felony, and shall suffer death. *Stat. 19 G. 2. c. 34.*

Three persons armed running of goods, or rescuing the same, felony.

If after the time appointed by this act for any person to surrender himself, any person shall harbour him, shall be transported for seven years.

Any person apprehending an offender to have 500*l.* and if wounded 50*l.* extraordinary; and the executors of a person killed to have 100*l.* One offender discovering another, to be acquitted, and have part of the reward; discovering two or more offenders, to have 50*l.* for each. *Stat. above.*

That from and after the 24th of June 1736, upon information on oath taken before any one or more justices of the peace, that three or more persons are or have been assembled for any of the purposes aforesaid, may grant a warrant for apprehending them, and may (if upon due examination he or they find cause) commit them to the next county gaol, there to remain without bail, until discharged by due course of law.

Justices may grant warrants where three or more are assembled to run goods.

Sheriffs, mayors, &c. on request in writing of a known solicitor for the customs or excise, to grant special warrants for the ap-

Justices to certify to secretary of state of the offences aforesaid.

prehending offenders, and the persons granting such warrants shall be saved harmless.

If any person shall be charged with any of the offences aforesaid before one or more of his majesty's justices of the peace, by information of one or more credible person upon oath subscribed, such justice shall forthwith certify under his hand and seal, and return such information to one of the principal secretaries of state, who is to lay the same before his majesty in privy council, whereupon it shall be lawful for his majesty to make an order, commanding such offender, &c. to surrender within forty days after the first publication in the *Gazette*, to the lord chief justice, or any justice of *B. R.* or to any one justice of the peace, if the offence be in *England*, or to any of the lords of justiciary, or any justice of the peace in *Scotland*, if the offence be there; which order the clerks of the privy council shall cause to be printed in two successive *Gazettes*, and to be sent to the sheriff of the county where the offence was, who shall, within fourteen days after the receipt, cause the same to be proclaimed between ten in the morning and two in the afternoon in the market place, upon two market days, and shall be fixed in some publick place in the said town; and in case such offender, &c. shall not surrender, shall be adjudged to be convicted of felony, and shall suffer death. *Stat. 19 G. 2.*

In smuggling of goods all present and aiding are principals, and equally liable to the whole penalty of treble the value. *Ld. Com. Rep. fo. 616.*

Soldiers.

Soldiers.

A PERSON inlisted a soldier, in four days to go before a justice and declare his assent, that he did it voluntarily; but if he dissents, he must return the money received, and 20s. for charges, to be discharged. 8 G. 2. c. 2.

Oath of a soldier when inlisted, pursuant to the statute above.

I A. B. do swear, that I will be true and faithful to our sovereign lord king *George*, and serve him honestly and faithfully, in defence of his person, crown and dignity, against all his enemies and opposers whatsoever, and serve and obey his majesty's orders and the orders of the generals set over me by his majesty.

So help me God.

Acknowledgment of a soldier being inlisted, and the justice's certificate thereunto.

I W. R. do acknowledge to have voluntarily inlisted myself as a private soldier to serve his majesty king *George* the second in
As witness my hand this day of
in the year of our Lord 1751.

Middlesex, } **T**HESE are to certify, that
to wit, } *W. R.* came before me, one
of his majesty's justices of the peace for the
B b 4 said

saïd county, and acknowledged to have voluntarily enlisted himself to serve his majesty king *George* in the abovesaid regiment and company: he also acknowledged he had heard the tenth article of war read unto him against mutiny and desertion, and took the oath of fidelity mentioned in the articles of war.

The certificate ought to set forth the place of the soldier's birth, age, and calling, if known. *Stat. 27 G. 2.*

Summons warrant by a soldier.

Middlesex, } COMPLAINT upon oath
to wit, } hath been made unto me,
 one of his majesty's justices of the peace for
 the saïd county, by *J. L.* a private centinel
 in his majesty's regiment of foot-
 guards, that you have refused to give him
 quarters, though duly billeted upon you,
 pursuant to the statute in that case made and
 provided: You are hereby required and di-
 rected, upon receipt of this summons, to ap-
 pear personally before me at my house in
 to shew cause why the penalty pre-
 scribed by act of parliament for that offence
 should not be levied by sale and distress of
 your goods: hereof fail not at your peril,
 otherwise I shall proceed to a conviction.
 Given under my hand and seal this day
 of in the year of our Lord 1751.

Forfeit not
 above 5 l. nor
 under 40 s.
 3 G. 2. c. 2.

*To Mr. H. L. a victualler,
 living at the sign of, &c.*

Constables

Constables may take up any man suspected to be a deserter, and bring him before a justice, and if upon examination, &c. it shall be found that he is a listed soldier, the justice shall cause him to be conveyed to the county gaol, and transmit an account thereof to the secretary at war, that he may be proceeded against according to law. Constables may take up any deserter.

And any person who secures such deserter, the justice is to issue his warrant to the collector of the land-tax money for payment of 20 s. for every such deserter, to the persons who secured him, out of the money arising, or to arise, in the year 1740. *Stat. 13 G. 1. c. 6.*

No justice of the peace having a military office, to be concerned in quartering of soldiers. Officers not to quarter wives, children or servants, without consent of the owners of houses, on pain of being cashiered.

Victuallers refusing soldiers quarters, and constables receiving rewards for excusing them, to forfeit not above 5 l. nor under 40 s. And if constables refuse to billet soldiers, to be fined not exceeding 40 s. nor less than 10 s. *Stat. 3 G. 2. c. 2.*

Soldiers not to be taken out of the service by any process, &c. but for some criminal matter, or a real debt of 10 l. and if arrested may be discharged by justices of the court out of which the process issued, who may examine upon the complaint of the party himself, or by his superior officer on oath, and discharge the soldier without fees, and may award costs to be recovered, as the plaintiff might have done. *Stat. 4 G. 1. c. 4. and 5 G. 1. c. 5.* The

Probate of a
soldier or sail-
or's will, dy-
ing or slain in
the service,
exempted
from stamp-
duties.

The probate of the will or letters of ad-
ministration of any common soldier or sea-
man, who shall be slain or die in the service,
shall be exempted from the stamp-duties, a
certificate being produced from the captain
under whom he served at the time of his
death, and oath made of the truth thereof
before the proper judge or officer, for which
oath no fee shall be taken. *Stat. 5 W. 3. c. 21.*

Stamps.

Power of ju-
stices relating
to the duty
on stamps.

TWO justices of the peace residing near
the place where any pecuniary forfei-
tures not exceeding 20*l.* on act touching any
duties under the management of the commis-
sioners of the duties on stamp vellum, parch-
ment and paper, shall be incurred, or any
offence against any of the same acts shall be
committed in any wise relating to the same
duties, by which any sum of money only
may be forfeited, may hear and determine
the same, who shall on information or com-
plaint within a year after seizure made, or
offence committed, summon the party accu-
sed and witnesses, and may issue warrants for
levying the penalties by distress and sale, if
not redeemed in six days. *Stat. 10 Ann. c. 19.*

And the justices may mitigate the penal-
ties, the charges being first allowed, and not
to reduce the penalty to less than double the
duty, over and above the said charges.

Summons.

Summons.

*Summons for victuallers to bring in their
licences in order to be renewed.*

*To the constables and headboroughs of the di-
vision of*

THESE are in his majesty's name to
command you to summon and warn all
the alehouse-keepers and fellers of brandy and
strong waters, in every parish within your
said division, personally to be and appear be-
fore us, or any other of his majesty's justices
of the peace for the said division, at the sign
of the on the day of
next, by eleven of the clock in the forenoon,
bringing with them their and every of their
former licences, in order to their being new
licensed: and that they also bring sufficient
sureties to enter into recognizances, according
to the statutes in that case made and provi-
ded: and you are also commanded perso-
nally to be and appear at the time and place
aforesaid, and to bring with you a true list
of the names and signs of all the alehouse-
keepers and fellers of brandy and strong wa-
ters, of every parish within your said divi-
sion: and lastly, you are hereby required to
make return hereof, and shew how you have
executed the same. Given under our hands
and seals the day of in the year of
our Lord 1753.

Summons

Summons.

Summons to pay small tithes.

*To A. B. now or late of the parish of B. in
the county of M.*

Middlesex, } **W**HEREAS complaint hath
to wit, } been made before us, two
of his majesty's justices of the peace for the
said county, that you the said *A. B.* have re-
fused to pay unto *C. D.* vicar of the parish of
E. in the said county, the sum of due
to him at last, for year small
tithes and offerings, contrary to the statute
in that case made and provided: These are
therefore to command and require you to be
and appear before us at the sign of the *C.* in
the said parish of *E.* on *Monday* the day
of *M.* next, by eleven of the clock in the
forenoon of the same day, and to shew cause
(if you can) why you should not pay the said
money: and we do hereby authorize *R. L.* of
S. to serve this our summons. Given under
our hands and seals the day of 1753.

Summons to appear for a nuisance.

Middlesex, } **Y**OU are hereby required per-
to wit, } sonally to be and appear be-
fore me at in the county of
on *Monday* next, being the 26th instant, or
some other of his majesty's justices of the
peace in and for the said county, to answer
the complaint of *E. R.* particularly for a nu-
sance, in laying or causing to be laid a parcel
of

of brick, lime and sand in *E. C.* in whereby the said *E. R.* received a dangerous wound over his right eye: hereof you are not to fail, as you will answer the same at your peril. Given under my hand this 23^d day of *August* 1754.

J. H.

To Mr. T. J. distiller,
in

Supercedens. See p. 305.

Supplicabit. See p. 295.

Curling and Swearing.

EVERY day-labourer, common soldier, Stat. 19 G. 2.
common sailor, to pay 1 s.

Every other person under the degree of a gentleman, 2 s.

And every other person of or above the degree of a gentleman, 5 s.

Constable to seize persons curling, &c. in his presence, and bring them before a justice, who is to convict them on the officer's oath; and if known, to make information against them.

And upon information given on oath, to cause the offenders to appear, and upon such information being proved, to convict such offender; and in case such offender shall not immediately pay down the respective sum so forfeited, or give security to pay the same to the justice's satisfaction, then to commit such offender,

Proof, &c. to
be made with-
in eight days.

offender, who is to be kept to hard labour for ten days.

In case a common soldier, common sailor or common seaman, shall be convicted, and shall not pay the penalty and the cost of the information, summons and conviction, instead of being committed to the house of correction, to be set in the stocks for the space of one hour for every single offence, and for any number of offences whereof he shall be convicted at one and the same time, two hours.

Justice not doing his duty forfeits 5*l.* one half to the poor, and the other to the informer, to be recovered by action, &c.

Constables not doing their duty forfeit 40*s.*

The form of the conviction.

Middlesex, } **B**E it remembred, that on the
to wit, } 30th day of November 1751,
in the 25th year of his majesty's reign, *A. B.*
was convicted before me, one of his majesty's justices of the peace for the said county, of swearing six profane oaths, or of cursing one or more profane curse or curses (*as the case shall be*) within the parish of *St. Clement Danes* in the said county (*or where it was committed*). Given under my hand and seal the day and year aforesaid.

Which said conviction shall be fairly wrote over upon parchment, and returned to the next general or quarter sessions wherein such conviction was made, to be filed by the clerk of the peace.

The

The penalties to be disposed of to the poor of the parish wherein such offence was committed.

The fee of 1*s.* for the justice's clerk for the information, summons and conviction.

This act to be read in every parish church four several times in the year, after morning or evening prayer, on four several *Sundays*, that is to say, the *Sunday* next after the 25th day of *March*, 24th day of *June*, 29th of *September*, and 25th of *December*; and in case divine service shall not be performed in any such church on any of the *Sundays* before-mentioned, then on the first *Sunday* after any of the said quarterly days on which divine service shall happen to be performed, on pain of 5*L.* for every such omission, to be levied by distress.

Caylors. See **Servants.**

Tithes.

WHERE small tithes do not amount to above the yearly value of 40*s.* under the from one person, and not paid in yearly value of 40*s.* how twenty days after demand, two or more justices may summons the persons complained of, and in default of appearance to determine the complaint with cost, not exceeding 10*s.* Which summons must be proved on oath, and on refusal to pay in ten days after notice, to be recovered.

notice, the constable, &c. may distrain, and after three days, in case the said sum so adjudged, with reasonable charges for making and detaining the said distress, be not paid, shall make sale of the same, retaining such reasonable charge of keeping the said distress as the justices shall think fit, rendering the overplus, if any.

Not to extend to *London*, &c.

No complaint to be made, unless within two years after the tithes did become due. *Stat. 7 & 8 W. 3. c. 6.* to continue for three years, and 10 & 11 made perpetual by 3 & 4 *Ann. c. 18.*

Quakers refusing to pay tithes, &c. justices may order payment.

Where any quaker shall refuse to pay his great or small tithes, or any church rates, two justices of the county, upon complaint of any parson, vicar, farmer or proprietor of tithes, churchwarden, &c. who ought to have or collect the same, may, by warrant under their hands and seals, convene before them such quaker, and examine upon oath the truth and justice of the complaint, and ascertain and state what is due and payable by such quaker, and by order under their hands and seals direct the payment thereof, so as the sum ordered do not exceed 10*l.* and upon refusal of payment, any of the said justices, by warrant under his hand and seal, to levy the money by distress and sale of such goods, rendering the overplus, the necessary charges of distraining being first deducted and allowed by the said justices.

Persons aggrieved may appeal to the quarter-sessions.

Quakers

and offerings due at last, according to the rights, customs and prescriptions commonly used in the said parish of *E.* Wherefore we the said justices, being neither of us patrons of the said parish of *E.* or any ways interested in the said tithes, offerings, oblations or obventions, did in writing under our hands and seals order the said *A. B.* to pay or cause to be paid to the said *C. D.* the sum of by us so adjudged to him for small tithes and offerings aforesaid, and for costs, making in all the sum of within ten days after notice to the said *A. B.* given of our said order and adjudication. And whereas it appears unto us the said justices, that the said *A. B.* hath had notice of the said order and adjudication, and hath refused and still doth refuse to pay to the said *C. D.* the several sums of and These are therefore in his majesty's name to will and require you, or one of you, forthwith to distrain the goods and chattels of the said *A. B.* and after detaining them four days (in case the said several sums so adjudged, together with reasonable charges for making and detaining the said distress, be not rendered or paid by the said *A. B.* in the mean time) that then you, or one of you, do make publick sale of the said goods and chattels, and pay to the said *C. D.* so much of the money arising by such sale, as will satisfy him the said sums of and to him so adjudged as aforesaid, and retain to yourselves the sum of for making and keeping the said distress (which we the said justices do hereby adjudge reasonable charges for

Stat. 27 G. 2.

for so doing) and render the overplus (if any be) to the said *A. B.* And hereof fail not at your perils. Given under our hands and seals this day of in the year of our Lord 1753.

An order for payment of small tithes.

Middlesex, } **W**HEREAS complaint in
to wit, } writing hath been made
unto us *R. C.* and *J. H.* two of his majesty's
justices of the peace for the said county, by
J. O. vicar of the parish of *St. C.* in the said
county, that *F. G.* of the said parish of *St. C.*
in the county aforesaid, yeoman, did refuse
for the space of twenty days next before the
time of the said complaint so made unto us
as aforesaid, to pay or compound for his
small tithes, offerings, oblations and obven-
tions arising in the said parish of *St. C.* and
due to him the said *J. O.* We therefore the
said justices, being neither of us patrons of
the parish church of *St. C.* aforesaid, nor any
ways interested in any of the said tithes, of-
ferings, oblations or obventions, having duly
summoned the said *F. G.* before us, and ha-
ving duly examined the truth and justice of
the said complaint upon oath, do find that
there is justly due from the said *F. G.* to the
said *J. O.* the sum of 4*l.* being the value of
the said tithes, offerings, oblations and ob-
ventions become due within two years last
past; and do therefore adjudge and order
the aforesaid *F. G.* to pay or cause to be paid
unto the said *J. O.* the aforesaid sum of 4*l.*
and also the sum of 10*s.* for the costs and
C c 2 charges

charges of the said J. O. in the prosecuting of the said F. G. for the recovery of the said just dues. Given under our hands and seals at in the said county, the day of in the year of our Lord 1755.

An order for quakers tithes.

Middlesex, } **W**HEREAS complaint hath
to wit, } been made unto us R. C.
 and J. H. two of his majesty's justices of the
 peace for the said county, by J. O. vicar of
 the parish of St. C. in the said county, that
 A. B. of the parish of St. C. in the county
 aforesaid, being a person commonly called a
 quaker, hath refused to pay or compound
 with him the said J. O. for his tithes and other
 rights, dues and payments belonging to the
 church of St. C. aforesaid, and justly due
 unto him the said J. O. We therefore the
 said justices, being neither of us patron of
 the parish church of St. C. aforesaid, nor any
 way interested in any of the said tithes, rights,
 dues or other payments, having duly sum-
 moned the said A. B. before us, and having
 also duly examined the truth of the said com-
 plaint upon oath, do find that there is justly
 due for the same from the said A. B. to him
 the said J. O. the sum of 10*l*. We do there-
 fore order, adjudge and appoint the said A. B.
 to pay or cause to be paid unto him the said
 J. O. the aforesaid sum of 10*l*. and we do
 also order and appoint the aforesaid A. B. to
 pay or cause to be paid unto the said J. O.
 the further sum of 10*s*. for such costs and
 charges concerning the premises, as upon the
 merits

merits of the cause do appear to us just and reasonable. Given under our hands and seals at, &c. in the said county, the day of
in the year of our Lord 1755.

Distress for quakers tithes.

To the constables and churchwardens of, &c.

Middlesex, } WHEREAS *A. B.* being a
to wit, } person commonly called
a quaker, hath been summoned to appear
before us, two of his majesty's justices of the
peace for this county, to be examined for
non-payment of his small tithes; and whereas
we the said justices did order the said *A. B.*
to pay unto *J. O.* vicar of *St. C.* the sum of,
&c. within ten days after notice of the said
order; and whereas it appeareth unto me
P. L. esquire, one of the said justices, and
also being one of the two next justices to the
parish church of *St. C.* aforesaid, in the county
aforesaid, that the said *A. B.* had due notice
of the said order, but did not, and still doth
refuse to pay the said sum of, &c. These
are therefore to require you forthwith to levy
the said sum of, &c. by distress and sale of
the goods and chattels of the said *A. B.* and
thereout also deduct your necessary charges
of distraining, and if any overplus shall re-
main after such payment and deduction as
aforesaid, that you do render the same unto
him the said *A. B.* Given under my hand
and seal at, &c. in the said county, the
day of in the year of our Lord 1755.

Transportation of felons.

IF any person ordered to be transported, or who shall agree to transport himself, shall afterwards be at large before the expiration of the term, without lawful cause, in *Great Britain*, he shall suffer death: to be tried as directed by the stat. 6 G. 1. c. 23. A reward of 20*l.* for discovering such offender. 16 G. 2. c. 27.

Traverse. See Indictment.

Treason.

Treason,
what.

TREASON in general signifies a betraying; it is divided into high treason and petit treason; the first of which is defined to be an offence committed against the security of the king and kingdom, 3 *Inst.* 4.

Treason, generally so called, is intended, not petit treason, but high treason.

Although treason, or misprision thereof, are not comprehended within the commission of the peace, yet it is against the peace of the king and kingdom, and any justice of the peace may upon his own knowledge, or the information of others, cause any person to be apprehended for such offence, and may take examinations of all persons apprehended for any such offence, and all those
I who

who can give evidence against them, to appear at the king's bench or gaol-delivery. *Hale's P. C.* 168.

No offender committed for high treason is bailable by justices of the peace. 3 *Ed.* 1. c. 15.

When a justice of the peace has committed an offender, he must immediately send an account of all the particulars to a secretary of state.

No act or offence at this day is to be deemed high treason, but such as are declared so by the statutes of the 25th of *Ed.* 3. and the first of *P. & M.*

Persons indicted for high treason or misprision of treason, where corruption of blood shall be made (except for counterfeiting the coin, the great seal, privy signet or sign manual) shall have a copy of the indictment, but not the names of the witnesses, delivered to them five days before trial. 7 *W.* 3. c. 3.

And shall have a copy of the panel of jurors delivered to them two days before the trial; and shall have process of court to compel their witnesses to appear. 7 *W.* 3.

The stat. 13 *W.* 3. enacts, that the pretended prince of *Wales* shall be and is attainted of high treason.

When a person is indicted of high treason or misprision of treason, shall have a copy of the indictment, and lists of the jurors, and also of the witnesses, delivered him ten days before the trial. 7 *Ann.* c. 21. And such person shall have two counsel assigned him by the court, who shall have access to them at reasonable times. 7 *W.* 3. c. 3.

No act deemed high treason, but such as declared by stat. 25 *Ed.* 3.

Parties in treason to have a copy of indictment, and of the panel of jurors; and to have counsel assigned them.

Persons impeached by the house of commons of high treason, whereby any corruption of blood may be made to any such offender, or to any of the heirs of such offender, or for misprision of such treason, shall be admitted to make his defence by counsel, not exceeding two, who shall be assigned on the application of the party impeached at any time after the articles of impeachment shall be exhibited by the commons. 20 G. 2. c. 30.

To compass or imagine the death of the king, queen or prince, or to violate the queen, the king's eldest daughter, or the prince's wife; or to levy war against the king, or adhere to his enemies; to counterfeit the king's seal or money, &c. declared high treason by stat. 25 Ed. 3. c. 2.

Treason committed out of the realm to be inquired of in such county, and before such persons, as the king shall appoint; and offenders convicted to forfeit to the king all lands, tenements, &c. in the king's dominions at the time of the treason committed. Stat. 26 Hen. 8.

Concealment
of treason,
what.

When one knows another has committed treason, and does not reveal it to the king, or some magistrate, by our ancient law it is high treason: for delaying to discover the treason is judged an assent.

But now there must be an actual assent in some outward act to make the concealing it treason, or it will be only misprision. Stat. 1 & 2 P. & M.

A person has notice of a meeting of conspirators, and goes into their company, and
hears

hears their treasonable consultation, and conceals it, this is treason. And where one by accident has been in such company, and conceals it, this is treason.

And so it is where one has been in such company, and heard their discourse, if he meets them a second time, it shews an approbation thereof.

Clipping, washing, filing, &c. of money, the coin of these realms or current here, adjudged high treason. *Stat. 5 Eliz.*

Clipping, washing, &c. of money, high treason.

Impairing, diminishing, lightening, &c. of money for lucre sake, made treason, and the offenders, accessaries, &c. to suffer death, &c. *18 Eliz. c. 8.*

Counterfeiting broad pieces of gold, or uttering them knowingly, guilty of treason. *Stat. 6 G. 2. c. 26.*

Washing, gilding or altering the impression of any real or counterfeit shillings or sixpences, or brass money, to make it pass for a guinea, &c. high treason. *Stat. 15 G. 2.*

Knowingly uttering false money, first offence six months imprisonment, second offence two years imprisonment, third offence felony without the benefit of clergy. *Ibid.*

If any person knowingly utter false money, and shall have about him any other false money, or within ten days after utter any other false money, shall suffer a year's imprisonment: and coiners of half-pence or farthings to suffer two years imprisonment. *Ibid.*

And in every case of treason that relates to the king's person, there must be overt acts of it, which must be made appear by plain and

In treason there must be overt acts.

and sufficient proof, and not by conjecture. There must be two witnesses to the same overt act, or two acts of the same treason, produced face to face, to make out the treason against him. 7 W. 3.

In criminal cases, where persons are committed to prison for capital offences, as treason, felony, &c. expressed in the warrant or commitment, on prayer in open court the first week of the term, or day of sessions, they are to be brought to trial.

If they are not indicted the next term or sessions, upon motion made the last day of such term, &c. they shall be admitted to bail, unless the king's witnesses are not ready: and in case they are not tried the second term, &c. they may be discharged. *Habeas corpus act* 31 Car. 2.

Judgment in high treason.

All are principals in high treason; and on an attainder of treason the judgment in all cases, except for counterfeiting the coin, is, that the offenders shall be drawn on a hurdle or sledge to the place of execution; and there to be hanged by the neck, but cut down alive; his privy members to be cut off, his bowels to be ript up, taken out, and burnt before his face; his head severed from his body, his body divided into four quarters, and those to be disposed of as the king thinks fit. Though where a peer commits treason, the king usually remits all but beheading. 3 Inst.

For

For counterfeiting the king's coin the defendant is to be drawn and hanged.

And the judgment in petit treason is for a man, to be drawn and hanged, and for a woman, to be drawn and burnt.

But judgment for murder and felony is, for a man or a woman, to be hanged by the neck till dead; and in extraordinary cases of a barbarous murder, the offender's body is hanged in chains.

Forfeiture.

In the said judgment is implied forfeiture of lands and goods to the king, loss of dower and corruption of blood. 3 Inst. 211.

From these severe and dreadful punishments it is observed, that the wicked fear to offend.

Petit treason, what it is.

THE crime of petit treason, by the stat. 25 Ed. 3. is, where a person out of malice takes away the life of a subject to whom he owes special obedience; as where a servant out of malice kills his master, or a wife her husband, or an ecclesiastical person, secular, or regular, kills his superior: and this is called petit treason in respect to high treason, which is committed against the king. Petit treason, what.

In our law this crime implies the highest degree of murder, and it is said, that two witnesses are required to find the indictment for petit treason, but not to the trial of it, for it is not within the act 7 W. 3. Hawk. P. C. All

All aiders and abettors, as well as procurers, are comprized within the stat. *Ed. 3.* and whatever will make one guilty or principal in murder, shall make him so in petit treason.

But if a servant kills his master upon a sudden falling out, or on *se defendendo*, it is not petit treason, but manslaughter. *Hale's P. C.*

Misprision of treason, what.

Misprision of treason, what.

1. **M**ISPRISION of treason has an absolute, independent sense, when taken for an high offence less than capital, and yet not particularly relating to treason or felony; though it is also said, that every treason or felony contains a misprision in it; therefore where a man has been guilty of treason, and there was only one witness, he was indicted for a misprision.

2. Misprision of treason is the knowledge and concealment of high treason without assenting to it; but if any circumstances shew an approbation of it, it will be high treason. *Stat. 2 & 3 P. & M. Keil. 17, 21.*

3. Receiving and comforting a traitor, knowing him to be such, is high treason. *3 Inst. 138.*

Who bound to discover.

4. The person who knows of an intended treason, is to make a particular discovery of it to a magistrate, or he will not be secure; but a man who hears a general report of an insurrection, &c. without any particulars, cannot be bound to make a discovery. *Keil. 22.*

The

The above misprisions of treason are negative; but the statute of 14 *Eliz. c. 3.* creates one positive misprision, viz. forging foreign coin not current here.

Treasure trove. See Felony.

Turnpike roads.

FROM and after the first day of *July* 1752, trustees of the turnpike roads within their respective districts may take 20s. above the tolls for every waggon, &c. drawn by six horses passing through turnpikes.

Persons taking off any horse from any waggon to avoid the said duty, being convicted thereof before the said trustees, or any five of them, or one or more justices of the peace, upon the oath of one or more witness or witnesses, shall forfeit to the informer 5*l.* which said sum, if not forthwith paid, to be levied by distress by warrant, &c.

Persons driving with more horses than such waggon shall pass with through any turnpike, &c. the same day, deemed to incur the penalty.

After the first day of *September* 1751, no waggon, &c. shall be drove out of the turnpike roads to avoid paying the tolls, upon forfeiting one of the horses, &c. to be levied according to the stat. 5 *G. 1.* by distress and sale, &c.

Coach,

Coach, berlin, chariot, chaise, calash, or any waggon, wain, cart, or other carriage imployed in husbandry, chalk, stone, timber, caravans or covered waggons, &c. for noblemen and gentlemens use, or ammunition, &c. for the king's use, are excepted.

Stat. 14 G. 2. After the 25th of *March* 1742, trustees for the roads shall erect engines within their respective districts for weighing carriages with their loading.

Trustees for the roads beyond thirty miles from *London*, where tolls do not amount to the annual sum of 150 *l.* not obliged to erect engines.

Stat. 1 G. 1. After the 24th day of *June* 1715, that if any carter, drayman, carman, waggoner or other driver, shall ride upon such cart, &c. in the city of *London*, or within ten miles thereof, not having some other person on foot to guide the same, such person being convicted thereof shall forfeit 10 *s.* in case such driver shall not be the owner; but if such driver be the owner, then any sum not exceeding 20 *s.* to be levied according to the stat. 1 G. 1. Any person may apprehend such offender, and carry him before a justice; and if any person shall resist, abuse or prevent any person in apprehending such offender, shall incur the penalty of 20 *s.* to be recovered as aforesaid.

Waggons drawing up hill may use as many horses, as the justices at the quarter-sessions shall direct.

That all penalties and forfeitures by this or any former acts, from and after the 10th of

of *September 1751*, shall be wholly vested and given to the informer.

Every informer shall and may recover such forfeitures by this or any of the acts, in the same manner as the same are respectively directed to be sued for and recovered, or by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of being forfeited by an act, intituled, &c. see the act at large. This action must be brought before the end of six calendar months after the offence committed. *Stat. 24 G. 2.*

The act of the 26th of *G. 2.* for amendment of the highways, not answering the purposes intended thereby, it is enacted, that for the space of three years, to be computed from the 24th of *June 1755*, all waggons, wains, carts and carriages, for goods and merchandizes, either loaden or unloaden, having the fellies of their wheels nine inches from side to side, may pass through turnpike gates without paying toll.

Stat. 26 G. 2.
continued for
three years
from 25th of
June 1755.

Also after the 24th of *June 1755*, all waggons having the fellies of their wheels at the sole thereof six inches, may pass through all turnpike gates with six horses, and carts and carriages of the like gage with four horses, without paying any more toll than is paid for waggons now drawn by four, and carts drawn by three horses, or for the horses drawing the same.

Also the trustees of any act or acts, or any five of them, may demand and take an additional toll (if they find the same necessary) not exceeding one fourth part more than the
tolls

tolls payable by virtue of such acts, for every coach, caravan, chaise marine, landau, berlin, chariot, chaise, chair and calash, and for all waggons, wains, carts and other carriages not having the fellies of their wheels of the breadth of nine inches or six inches, before the same shall be permitted to pass through any of the gates where tolls are payable, to be applied to the same uses as other tolls are by the said statutes.

Also all acts made this sessions, or heretofore made for repairing and amending turnpike roads, for the benefit of creditors who have lent money on the security of tolls, shall be continued for five years from the several expirations of such acts, and be subject to the tolls, penalties, forfeitures, rules, directions and payments, &c. as enacted by the said acts.

Also for removing of doubts arising upon the construction of the words of the 26th of G. 2. which directs the fellies of the wheels of every waggon or wheel carriage to be of the breadth of nine inches from side to side, it is declared, that it is the true intent of this and the said act, that the sole or bottom of such fellies shall be nine inches from side to side, and the same to be flat and even.

Also that if any person shall unload any goods, &c. from a cart, waggon or carriage before the same shall come to any turnpike gate, with an intent to avoid the payment of the toll, the owner thereof being convicted before three trustees of such tolls, or any justice of the county where such offence shall be committed, shall forfeit 5*l.* to be levied by

by distress and sale by warrant of the said trustees or justice, rendering the overplus to the owner, after deducting all charges, as shall be settled by the trustees or justice, and the driver of such waggon or carriage so offending and convicted, shall be committed to the house of correction for one month; and if the collector of any tolls shall permit any of the carriages aforesaid, not having the fellies of their wheels of the breadth of nine inches, to pass through such turnpike without weighing, and be convicted in manner as aforesaid, shall be committed to the house of correction to hard labour for one month.

Also from and after the said 24th of *June*, all waggons, wains or other four-wheel carriages, not being common stage waggons or carriages (though the fellies of their wheels are not nine inches or six inches) may travel upon any turnpike road with any number of horses or beasts not exceeding five; and if the owner or driver shall drive with more, the owner shall for every such offence forfeit 5*l.* to be levied by distress and sale of his goods by warrant of any three trustees of the district, or justice near the place where the offence shall be committed, or by action of debt, &c. in any of the courts of record at *Westminster*: and if the driver shall act contrary to the true intent and meaning hereof, such justice shall commit him to the house of correction for one month without bail or mainprize.

Also that any waggons or other four-wheel carriages, not having the fellies of their wheels

D d

of

Turnpikes.

of the breadth of nine inches, may travel upon any turnpike road, provided the same be not drawn by more than six oxen or neat cattle in pairs and two horses, or eight oxen in pairs with one horse; or carts or other two-wheel carriages with six oxen in pairs and one horse, or four oxen or neat cattle in pairs and two horses.

It is also enacted, that in all such cases where the horses or beasts drawing the carriage using such broad wheels, as directed by the 26 G. 2. and by this act, shall, for the space of three years as aforesaid, be intitled to the exemption of payment of any toll.

Where the toll doth not amount to more than one half-penny for every horse drawing any wheel carriage not having the fellies of the breadth of nine inches or six inches from side to side, or to more than one penny for two horses, or more than three half-pence for three horses, five or more of the trustees, if they find the same necessary, may collect double the former tolls, in case the same do not exceed one half-penny, and three half-pence, in case the same do not exceed one penny, and two pence, in case the same do not exceed three half-pence; and may collect the additional tolls directed by this act, in cases where the present toll amounts to two pence or more upon the horses drawing, in the same manner as if such tolls were laid upon the carriage.

All courts and justices of the peace before whom there shall be any proceeding for any forfeiture for repairing and amending turnpike roads, are required, where any prior seizure,

seizure, action, information or conviction shall be set up by way of defence to defeat any action or seizure, &c. to examine into the real merits of such prior seizure, &c. and if it shall appear the same was not prosecuted effectually, but to favour the offender, such prior seizure, &c. shall be deemed fraudulent.

Also that no person after the said 24th of June shall be capable of acting as a trustee for the repair of the publick roads, unless he shall have in his own right, or in the right of his wife, in the actual possession of the rents and profits of the lands and tenements of the clear yearly value of 40*l.* or possessed of or intitled to a personal estate alone, or real or personal estate together, to the value of 800*l.* or shall be heir apparent of a person possessed of an estate in land of the clear yearly value of 80*l.* And unless he shall (not being such heir apparent) before he acts, take and subscribe the oath following before any two or more of the trustees acting for such road, *viz.*

I *A. B.* do swear, that I truly and *bona fide* The oath of a trustee. I am in my own right, or in right of my wife, in the actual possession and enjoyment or receipt of the rents and profits of lands and tenements or hereditaments of the clear yearly value of 40*l.* or possessed of or intitled to a personal estate alone, or real or personal estate together, to the value of 800*l.*

So help me God.

If any person shall act contrary to the true intent hereof, shall forfeit 50*l.* to any person who shall sue for the same in any of the courts at *Westminster*, by action of debt, &c.

Common stage waggons and carts having the fellies of the wheels of less breadth than nine inches or six inches, shall, over and above what is obliged by law to be written or painted on them, have painted on the tilt, if any, and where there is no tilt, upon the most conspicuous part of such waggon or cart, the following words, *viz. Common stage waggon or cart*, as the case may be; and if the owner shall, from and after the said 24th of *June*, travel with, or use by himself or servant, any such waggon or cart without such words, shall forfeit one of the horses or beasts (not being the draught or thill horse) together with all his geers and accoutrements, to the person who shall seize the same, and shall proceed in like manner, and be intitled to the like remedy, as is directed by the said act of 26 G. 2.

The prosecutor may at his election sue for any forfeiture or penalty by this or any other act made for repairing turnpike roads, in the same manner as they are directed to be sued for, or by action in any of the courts at *Westminster*, in manner following, *viz.* where any person shall be liable to any pecuniary penalty, the same may be sued for by action of debt, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of forfeited by an act, intituled, *An act to amend an act made in the 26th year of the reign of his present majesty*,
intituled,

intituled, *An act for the amendment and preservation of the highways and turnpike roads*: and where the forfeiture is of any horse or beast of draught, or other goods, by an action of trover against the person liable to such penalty, in which the value of such horse, beast of draught, or other goods liable to the forfeiture, shall be given in damages without the proof of any seizure or demand.

There shall be no more than one recovery for the same offence, and no action shall be brought in any of the said courts, unless the same be brought before the end of six months after the offence committed.

Every surveyor of any turnpike road, and every toll-gatherer, and all persons employed by the trustees for the repairing roads, as receive salaries, who shall wilfully neglect to seize any supernumerary horse drawing in any waggon, wain or cart, contrary to this and the recited act, and to lay such information upon oath before some justice for the county wherein such offence was committed, or before the trustees at their respective meetings, shall, upon information made thereof upon oath before some justice for the place, forfeit 10*l.* half whereof to be paid to the informer, and the remaining half to be laid out in amending the roads.

No surveyor or other person shall be liable to the said penalty for any such wilful neglect committed before the 24th of June 1755.
Stat. 28 G. 2.

Vagrants.

Vagrant passes.

To the constables, headboroughs, titthingmen, and others officers of the peace of the parish of St. Mary, Islington, in the said county (or if the offender is committed to the house of correction, then, To the governor or master thereof). And also to all constables, and other officers whom it may concern, to receive and convey. And to the churchwardens, chapelwardens, or overseers of the poor of the parish of (or if the place where such person is to be sent be a town, then, To the town, or any other particular place, as the case shall be) of Nantwich in the county of Cheshire, or either of them, to receive and obey.

Middlesex, } **W**HEREAS *A. B. C. D.*
to wit, } and *E. F.* loose and disorderly persons, was, or were (*if more than one*) apprehended in the parish of *Islington*, or in the town of, &c. as rogues and vagabonds (*or if but one*, as a rogue and vagabond) viz. wandering and begging there; and upon examination of the said *A. B. &c.* taken before me, one of his majesty's justices of the peace for the said county of *Middlesex*, upon oath (which examination is hereunto annexed) it doth appear, that his or her or their (*if more than one*) last legal settlement
(*here*

(*here name them*) is or are in the parish of *Nantwich* aforesaid, and have (*if more than one, otherwise hath*) not since obtained any legal settlement; or that the said *A. B. &c.* is or are under the age of fourteen years, and hath (*or have*) a father or mother living or abiding in the said parish of *Nantwich* (*or other place, describing the same*): These are therefore to require you the said constable or other officer (*or governor or master of the house of correction, as the case may be*) to convey the said *A. B. &c.* to the parish of *Barnet* in the next direct way to the said parish of *N.* and to deliver him or them (*as the case shall be*) to the constable or other officer (*of such first parish, &c.*) in such precinct, together with this pass, and the duplicate of the examination of the said vagabond, taking his receipt for the same; and the said vagabond is to be thence conveyed on in the like manner to the said parish of *N.* there to be delivered to some churchwarden, chapelwarden or overseer of the poor of the same parish, to be there provided for according to law; and you the said churchwardens, chapelwardens and overseers of the poor are hereby required to receive the said person or persons (*name him or them*) and provide for him or them, *&c.* as aforesaid. Given under my hand and seal this 29th day of *October* in the year of our Lord 1751.

Stat. 17 G. 2.

The justice of the peace may inform himself, upon the oath of the vagabond, or any other person, of the condition and circum-

stances of the person apprehended, and of the parish or place where last legally settled; the examination, or substance thereof, to be put in writing, and to be signed by the persons examined; the justice must sign the same, and make a duplicate of such pass and examination, and transmit the duplicate of such pass, together with the examination, to the next general sessions, there to be recorded, and shall annex the duplicate of the examination to the pass, and send it with the same: and the said pass, examination and duplicate, shall be read in any court of record.

But when it appears that such person has any legal settlement, the justice must by a pass under hand and seal (see the above *pass*) taking notice where and for what cause the person was apprehended, and where he is to pass.

But if it cannot be found that such person has any legal settlement, then he shall be conveyed by pass to the place of his birth.

Where the person is under fourteen years, and has any father or mother living, then to the place of abode of such father or mother.

But where such place of birth or parent's abode cannot be known, then to the parish, town or place where last found begging or misordering themselves, and passed unapprehended, to be delivered to the churchwarden or overseer of the poor of the parish, &c.

The justice, if he see occasion upon the examination, may order such vagabond, before he is sent by pass, to the house of correction till next quarter-sessions, or shorter time,

time, to be kept to hard labour, and afterwards to be sent away by pass.

Returning after being sent by pass, such person may be committed by one justice to the house of correction for three months to hard labour, and to be whipt, and to be afterwards sent back by pass to the parish where he was first sent.

The justice, together with the pass, is to give the constable, &c. a note or certificate, ascertaining how the person is to be conveyed, whether by horse, cart or on foot, and whether and what allowance such constable is to have, &c.

The form of the certificate.

WHEREAS by a pass granted by R. C. Esquire, one of his majesty's justices of the peace for the said county of *Middlesex*, directed to the constable of the parish of *St. Mary, Islington*, requiring the said constable to convey *A. B. C. D.* &c. vagrants, taken up, and acting as vagrants in the parish of *St. Mary, Islington*, to *Nantwich* in the county of *Cheshire*: I do hereby order and direct the said *A. B.* &c. to be conveyed on foot, or on a cart, or horseback, or as necessity shall require, to the said parish of *Barnet* in the county of *Hertford*, in the way to the said parish of *Nantwich* in the said county of *Cheshire* in days time; for which the said constable is to be allowed the sum of 8s. or, &c. and no more. Given under my hand and seal this 29th day of *October* 1751.

The

The examination of A. B. &c. a rogue and vagabond, apprehended by N. S. in the parish of St. Mary, Islington, in the county of Middlesex, and brought before me, one of his majesty's justices of the peace for the said county of Middlesex aforesaid, and taken before me this 29th day of October in the year of our Lord 1751.

THIS examinant on oath says, that he was by indenture bound an apprentice to, and did serve *P. H.* in the parish of *L.* in the county of *W.* shoemaker, for the space of two years and upwards, the last part of his apprenticeship, and since hath not been a yearly hired servant, rented any house, paid to the poor, or done any act whereby to gain any legal settlement in any parish or place whatsoever, save as aforesaid; and that he has a wife named *S.* and one child named *L.* of the age of four years; and further saith not.

Taken, signed, and sworn,
this 20th day of *Septem.*
1751, before me

R. C.

Note; The examination is to be on the next leaf of the printed pass.

The officer who conveys the vagabond must take a receipt under the officer's hand to whom he delivers the vagrant, else he cannot have any money for conveying him.

And

And there must be an affidavit, according to a new order of the justices of *Middlesex*, to which the receipt abovementioned must be annexed; which receipt and affidavit are as follow:

Affidavit.

Middlesex, } *W. C.* one of the churchwardens
to wit, } of the parish of *St. Luke* in
the county aforesaid, maketh oath, that on
the 30th day of *April* last past he received a
pass-warrant under the hand and seal of
W. W. one of his majesty's justices of the
peace for the county aforesaid, thereby di-
recting *R. H.* and her two children, vagrants,
to be conveyed from the parish of *St. Luke*
aforesaid to *Colebrook* in the county of *Bucks*,
in their way to the town of *Newberry* in the
county of *Berks*; and that he, this deponent,
accordingly conveyed the said vagrants to the
said town of *Colebrook*, and delivered them to
R. H. constable of the said town of *Colebrook*,
and took his receipt for the same, which said
receipt is hereunto annexed.

W. C.

Sworn the 2d day
of *May* 1752,
before me
W. W.

Receipt to be annexed.

May 1, 1752.

R ECEIVED *R. H.* and her two children
mentioned in the pass, by me
R. H. constable of *Colebrook*, *Bucks.*
Rogues

Rogues and
vagabonds,
how to be
passed.

Rogues and vagabonds sent by passes from one county, &c. to another, shall be delivered to the constable or other officer of the first town, parish or place in the next county, &c. or franchise, and shall be by such constable conveyed forward in the manner as by the stat. 17 G. 2. is directed, and the expences are to be paid by the treasurer of each county, corporation, &c. And upon such constable's or other officer's producing to him a certificate or other vouchers, as are required by the said act of 17 G. 2. to be delivered to the chief or high constable.

How every
order of re-
moval is to be
directed.

Every order of removal ought to be directed to the parish officers removing, and to the parish officers to whom removed, and not to the officers of that parish alone to which the person is removed; and for that reason the order was quashed. 3 Salk. 256.

If a rogue affirmeth that he was born in such a town in such a county, then ought he to be sent thither; if it may otherwise appear that he was born elsewhere, and if he were not born there in truth, then is he said to be an incorrigible rogue, and is to be sent thence to the house of correction in the county to which he is sent, and if there be none there, then to the gaol, until the next sessions, there to be dealt with according to the statute. *Lambard, fo. 192.*

The same course is to be observed, if it appear not where he was born, or if he untruly affirm, that he was last dwelling in such a town in such a county, by the space of a year, and was not. *Ibid.*

If

If the husband or wife have a house, and the husband or wife rogue about, they ought to be sent to the town where that house is; and so of an inmate.

The wife and children (under seven years of age) being vagrant, must go and be placed with the husband; if the husband be dead, then with the wife where she was born or dwelt, and the vagrant children (above seven years of age) must be sent to the place of their birth; and if the vagrant parents with their children (under seven years) be placed at the place of birth of the parents, or at the place of last dwelling (as the case shall fall out) if afterwards the parents, or either of them, die or run away, yet the children once settled must remain there still, and may not be sent to the place of their birth, though after they grow above the age of seven years. *Lambard 193.*

Where wife and children, being vagrants, must go.

By the stat. 27 H. 8. sturdy beggars guilty of the second offence were to be executed as felons.

Vagabonds wandering to be whipt openly by the appointment of any justice, &c. and sent from parish to parish to the places of birth, &c. *Stat. 39 Eliz. c. 4.*

But some of these statutes are repealed wholly, and others in part, by the statute of 12 Ann. c. 23.

A vagabond is one who, without a lawful passport, wanders about from his place of legal settlement, and liveth idly and loitering.

What a vagabond is.

Being

Being born in a parish doth not make a settlement, if born in lawful matrimony, for in that case it must follow the settlement of the father.

What statutes relating to vagrants are repealed.

All former laws made on this head were found by experience ineffectual; therefore the statute of 12 *Ann.* was made, to reduce them all into one act, and to repeal several of the laws therein mentioned: this statute being likewise found ineffectual, the 13th of G. 2. another act was made, where (by the last clause of that act) it repeals that of the 12th of *Ann.* But this act having been also thought defective, hath been since repealed by the statute of 17 G. 2. c. 5. intituled, *An act to amend and make more effectual the laws relating to rogues.*

Who shall be deemed idle and disorderly persons.

By the 17 G. 2. persons who threaten to leave their families to the parish, returning from the place they were legally removed to, living idle and refusing to work, or begging alms in the parish where they dwell, shall be deemed idle and disorderly persons; and being convicted before one justice, or by his own confession, or oath of one credible witness, may be committed to the house of correction for a month.

Patent gatherers, or gatherers of alms, fencers and bear-wards, players of interludes, or plays not being authorized, minstrels, jugglers, gipsies, fortune-tellers, players or betters at unlawful games, hawkers without licence, and wandering beggars, are deemed rogues and vagabonds. Escaping, or refusing to be conveyed by pass, or giving false account
of

of themselves, escaping out of any house of correction, or having been punished as rogues and vagabonds, shall, if they offend again, be deemed incorrigible rogues, and to be whipt, and sent to their last legal settlement.

Stat. 17 G. 2.

Any one may apprehend and carry before a justice any persons placing themselves in streets, &c. and if they resist or escape from the person apprehending them, they shall be subject to the punishment as rogues and vagabonds are by this act; and the justice by warrant may order any overseers, &c. where such offender was apprehended, to pay 5*s.* to the persons apprehending them for every offender; and it shall be allowed in his account, producing the justice's order, and a receipt under the hand of the person to whom paid; on oath before the said justice that the overseer neglects to pay the said sum, he may by warrant order it to be levied by sale of the overseers goods by distress, and the overplus (if any) after the charges, shall be returned; and in this case he shall not be allowed it in his account.

Any one may apprehend vagrants.

If any constable neglects to use his best endeavours to apprehend or convey to some justice such offender, it is a neglect of duty, and shall be punished according to the statute.

Any one may apprehend and deliver to the constable, or carry such offender before some justice, &c. where no constable or other such officer can be found; such person so offending, being convicted upon view or oath, to forfeit 10*s.* to the use of the poor of the parish,

parish, &c. to be levied by distress by warrant from any justice, &c. the overplus, after charges, to be returned.

If a constable or other such officer shall convey such rogue or vagabond, such justice, &c. may reward such constable by making an order under hand and seal upon the high constable, to pay 10s. to the party so apprehending, within a week after demand, and producing such order, and upon giving a receipt for the same the treasurer of the county, &c. is to allow or pay it to the high constable: and if any high constable, or where there are no high constables, the petty constables, neglect to pay 10s. such justice, &c. may by warrant, &c. levy 20s. by distress on such constable, and thereout allow the reward of 10s. to the person intitled, and such other recompence for his trouble, as the justice, &c. think fit, the overplus to be returned to the constable, &c. *Stat. 17 G. 2.*

The constable, &c. in *Cumberland*, &c. upon any person's being delivered to them by pass, whose settlement is in *Scotland*, are to convey, &c. such person, &c. into the next shire in *Scotland*, and deliver him to some constable, &c. of the next parish, taking his receipt for him: and if such vagrant, after being sent into *Scotland*, shall be found wandering, &c. in *England*, shall be punished as an incorrigible rogue.

Masters of
vessels bound
to Ireland to
take in va-
grants.

Master of any vessel bound for *Ireland*, &c. is, upon warrant to him directed by a justice of the peace, &c. where the ship lies, to take on board such vagrants as are expressed in the warrant, and convey them to such place in
Ireland,

Ireland, &c. as the ship is bound to; the constable who serves him is to pay him for charges such rate *per head*, as the justices at sessions appoint. The master is on the back of the warrant to sign a receipt for the money: the warrant thus indorsed, is to be produced to the same justice, and upon his allowance the money to be repaid by the county.

Masters refusing to receive on board such vagrants, or to indorse or sign such receipt, forfeit 5*l.* to the use of the poor, to be levied by sale of the ship or goods, returning the overplus after the penalty and charges.

No master to be compelled to take on board more than one vagrant for every 20 tons.

Rogues are not to be sent to the house of correction, but by passes to the place of their birth, or to the parish where last legally settled; and if those cannot be known, then to the place he passed through last, without being punished, and if that cannot be known, then to the house of correction. 2 *Bulst.* 357.

Rogues may not be sent by a general passport, but from parish to parish.

The continuation of a pass from one county to another.

I Do hereby order you to convey the above named, &c. or within named vagrant to, &c. in the county of, &c. in order to his being further conveyed to, &c. according to the above written pass, and as the law directs. Given, &c.

E e

A ju-

A justice's allowance and taxation of a constable's account for conveying vagrants, to be added at the foot of the account.

I Having examined this account of the constable of, &c. for conducting and entertainment of vagrants (by virtue of passes which were allowed and signed by me) do think the same to be just and moderate, and hereby direct and order the same, amounting to, &c. to be reimbursed to the high constables of the hundred of, &c. for their use. Witness my hand, &c.

Mittimus of a vagrant to the house of correction, escaping from the place to which he was sent.

Middlesex, } **W**HEREAS *A. B.* a vagrant, was sent by pass from *L.* in the county of, &c. to the parish of *M.* in the county of, &c. and delivered to the churchwardens of the said parish of *M.* or to one of them, but did soon afterwards escape from the said churchwardens, and was found and taken wandering and begging in the parish of *H.* &c. all which hath been duly proved before me; I do therefore herewith send you the body of the said *A. B.* requiring you to receive him into the house of correction, and there keep him to hard labour till the next quarter-sessions of the peace, to be holden for, &c.

A war-

A warrant to the master of a ship to transport a vagrant to Ireland, the place of his settlement.

Middlesex, } **W**HEREAS *A. B.* a vagrant, was apprehended wandering and begging in the parish of *W.* in the county of, *Essex.* and upon his examination and other due proof, it appeareth unto me, that the last place of his lawful settlement was at *N. Essex.* in the kingdom of *Ireland*; I do therefore order and require you to take the said *A. B.* on board your ship now riding at, *Essex.* within the limits of this county, and to transport him from thence into *Ireland* aforesaid, and for so doing this shall be your warrant. Given under my hand and seal, *Essex.*

A warrant to levy 5l. on a master of a vessel refusing to transport a vagabond.

Middlesex, } **W**HEREAS by a warrant under my hand and seal, directed to *M. C.* master of the ship or vessel called the, *Essex.* now riding at, *Essex.* within the limits of the said county, he was ordered to take on board his said ship one *A. B.* a vagrant, and to transport him from, *Essex.* to *Ireland*, where he was last legally settled; but the said *M. C.* did, and doth still refuse to take the said *A. B.* on board his said ship, and to transport him to *Ireland* as aforesaid, by reason whereof he hath forfeited 5l. These

Waggons.

are therefore to require you forthwith to levy the sum of 5*l.* by distress and sale of the said ship and goods therein, or so much thereof, as shall raise the sum of 5*l.* and that you pay the same to the churchwardens or overseers of the poor of the said parish of, &c. where the said *A. B.* now lieth for transportation, for the use of the poor thereof. Given under my hand and seal, &c.

Uesry and Uesry clerk. See Churchwardens.

Waggons.

NO travelling waggon or cart shall be drawn with more than six horses or oxen in length, under the penalty of 5*l.* to be levied by distress of the horses or oxen of the waggon in three days, by virtue of a justice's warrant. *Stat. 6 Ann. c. 29.*

Any person may distrain or seize horses, &c. and deliver them to the surveyor of the highways or other parish officer; and the person so, &c. neglecting to bring the cattle to the surveyor of the highways, forfeits 20*l.* and the surveyor neglecting to deliver the forfeitures (after levied) to the justice to be distributed, liable to the like penalty of 20*l.* to be employed, one moiety in repairs of the highways, and the other to the informer, to be levied by distress by virtue of a justice of the peace's warrant; and for want of

of a distress the offender to be sent to the county gaol. *Stat. 9 Ann.*

Any person employed by a carrier or other person, subject to the penalties of 6 *Ann.*

Driving or assisting in driving of any travelling waggon or cart with more than six horses, oxen, &c. shall forfeit 5 *l.* to be levied and disposed of as aforesaid; but where six horses are not sufficient to draw up hill or out of any foul place, then any person may, by consent of the owner or driver, add more beasts from any other cart then travelling on the road.

By the 1 *G. 2. c. 10.* waggons, carts, &c. were to be drawn with five horses, and no more, under the penalty of 6 *Ann.* But by 5 *G.* they are to be drawn with six horses, and carts with three only; travelling with more, the extraordinary horses to be forfeited to the seizer, with all geers, accoutrements, &c. the horses, &c. to be delivered to the constable or other parish officer; and oath is to be made of the offence before a justice, who upon conviction is to issue his warrant to such constable, &c. for the redelivery of the horses to the seizer.

Travelling waggons, &c. to have their wheels bound with streaks or tire two inches in breadth, when worn, on pain of forfeiting all the horses exceeding the above number, with their geers, &c. Streaks set on with rose-headed nails are liable to the same penalty.

Persons obstructing the seizure of horses shall be committed for three months, and

Waggon.

forfeit 10*l.* leviable on their goods, if not paid in three days.

Carriages employed in husbandry, &c. caravans, &c. and carriages with timber, ammunition, artillery, &c. are excepted.

The driver of any cart, car, dray or waggon, who shall ride on such carriage, not having some other person on foot or on horseback to guide the same (such carts excepted as are drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins) or the driver of any carriage whatsoever, who shall by negligence or wilful misbehaviour, cause any hurt or damage to any person passing or being upon any street or highway, being convicted thereof before any justice for the county or place where the offence shall be committed, shall forfeit for every such offence a sum not exceeding 10*s.* or be committed to the house of correction for any time not exceeding one month, at the discretion of the justice; and such offender, in either of the said cases, may be apprehended without a warrant, by any person who shall see the offence committed, and be conveyed to some constable or other peace officer to be carried before a justice, to be dealt with according to law. *Stat. 27 G. 2.*

See **Highways.**

Information

Information against a person drawing a waggon with more horses than allowed by law.

The information of A. B. of, &c. taken before me one of his majesty's justices of the peace for the county of M. the day of, &c. in the year 1753.

THE said *A. B.* on his oath saith, that in or upon the day of, &c. last past, he the said *A. B.* saw a waggon belonging to, &c. of, &c. in the said county, carrier, travel through the parish of, &c. in the plain road, some distance from any hill, &c. drawn by seven horses at length, which said waggon was loaded with goods from, &c. and travelling for *London*.

L. F.

Sworn the day and
year abovesaid,
before me

R. C.

Warrant for delivery of the horses seized to the seizer, for travelling with waggons contrary to law.

To the constables of B. in the county aforesaid.

Middlesex, } **W**HEREAS *A. B.* of *B.*
to wit, } aforesaid, hath made oath
before me, that *C. D.* waggoner, on *Monday*
last past, in the highway leading from *B.*
E c 4 aforesaid

aforesaid to C. in the county of H. travelled with a waggon drawn with seven horses, contrary to the statute, whereby he hath forfeited all the horses above the number of six, with their accoutrements, &c. and the same being seized and delivered over to the aforesaid constable of B. These are therefore in his majesty's name to require and authorize you the aforesaid constables to redeliver the horses abovementioned, and all the geers, &c. to the said A. B. the seizer, for his sole use, he paying the reasonable charges for keeping, &c. Given under my hand and seal this day of 1753.

Stat. 5 G. 1. c. 12.

See Turnpikes.

Warrants.

THE justice must take care to pen his warrant plain and clear, and not ambiguous and doubtful, so that the officer must be forced to inquire what may be his meaning by his words.

The warrant must be compleat when the justice doth put his hand to it; for it is dangerous to let it go with blanks, and give other men leave to fill it up.

The words, *Greeting, To W. R. &c.* used in warrants, may be left out; so may those words of addition, *To the justices of the lord the king assigned to keep the peace, and to bear*
and

and determine felonies, &c. and it is enough to say, *Justices of the peace of or within the county of C.* How justices warrants are to be directed.

It is not amiss, if the warrant recite a conviction of an offence, to express where the offence was done, as thus, *J. L. of being convicted before me, that he was drunk at M. in this county*; because in many cases the forfeiture is given to the poor of the place where the offence is done; and it is also good to express the time when the offence was committed, as thus, *J. L. being duly convicted before me, that he was drunk on the day of in the parish of* *aforsaid*, that it may appear when the offence was committed; because in some cases, when the law inflicts a punishment within a certain time, there it is good to say that the offence was done within the time: this offence must be punished within six months after it is done, and therefore must say when it is done.

It is usual to grant warrants against offenders upon penal laws, to bind them over to sessions before they be indicted of the offence, in cases where there is no special power or direction given by the statute so to do: but I conceive it not adviseable so to do, being unsatisfied of the lawfulness thereof; but I agree it to be clear and safe, that after the offender is indicted of the offence, and the bill of indictment found by the grand jury, or after an offence found by presentment of grand jury, there it may be done, and the party offending forced to be bound over to the next quarter-sessions to answer it, and also to put in sureties for his good behaviour in

in the mean time, if the offence for which he is indicted will warrant it; as, if a man be indicted for selling ale contrary to the justices order, or the like; so also in cases where a law doth give a special command and power to any justice of the peace to bind over an offender to the sessions, as the statute of the 5th of *Eliz.* touching masters and apprentices; the law of the 23d of *Eliz. c. 10.* and some others; in these cases they may bind over before indictment; but then it is best first to send a warrant of summons to call in the party offending before the justice to answer the complaint, and then if he appear, and the justice sees no cause to bind the party over; but if he does not appear, then he may make his warrant, and bind him over for his contempt.

Where a statute doth give power to a justice of the peace to compel a man to do any thing, in order hereunto he may send his warrant to require him to come before him, and in case of refusal, to proceed as in the last abovementioned.

The title and form of one of those warrants, hereafter mentioned, may serve to direct all the rest with very little alteration.

Dalt. 117.
21 H. 7.

A warrant must express the year and day when it was made, and it is good to set down the place; for a warrant made by a justice of the peace out of his county is questionable; but it is clear the officer cannot carry the offender out of the county.

The justice's warrant may be directed to the sheriff, constable, or any indifferent person by name; but it is said, that neither any
constable

constable or private person, who is not of the precinct wherein it is to be executed, are bound to serve it. *Lambert, title Surety of the peace, c. 2. p. 90.*

If a warrant is directed to the constable by name, though he is not compellable to go out of his parish, yet he may if he will, and shall be justified by such warrant; but if directed to all constables generally, in such cases a constable cannot execute it out of his precinct. *Salk. 176.*

The justice may make his warrant (in case of the peace and good behaviour) to bring the party before himself; and this is said to be the best form, though the other form (says, *or some other justice*) is more usual. *5 Co. 59.*

It is at the election of a constable to carry an offender apprehended before any justice, if the warrant be not specially to bring the offender before the justice who granted it. *5 Rep. 59.*

If a constable take a person, and let him go on his promise to return, he cannot retake him by the first warrant; but if he escape, he may pursue him, though in another county. *2 Hawk. P. C. c. 82.*

See *The duty and office of a constable*, p. 89.

The warrant of the justice of the peace ought to mention the name of the party to be attached, and must not be left in general, or with blanks to be filled up by the party afterwards. *Dalt. c. 117. p. 329.*

The party that demands a warrant to apprehend a person for felony, ought to be examined on oath touching the whole matter whereupon

3 Cro. 395.

whereupon the warrant is demanded; and that examination must be put into writing; and the warrant ought to contain the cause specially, and should not be generally, to answer such matters as shall be objected against him, because it cannot appear, whether the party beailable or not. 2 Co. Inst. p. 52, 591.

Actions of false imprisonment, if executed, will lie against the constable who executes such warrant; and therefore upon such a general warrant returned upon a *habeas corpus*, it is in the pleasure of the court of king's bench to bail or discharge him; and accordingly for this reason, *Pasch. 23 Car. B. R.* in *Brown's* case, he was discharged. *Hale's P. C.* 111.

A justice of the peace may make his warrant to apprehend a person suspected by name, upon a complaint made to him; but where a complaint to a justice is made of a robbery, a warrant to apprehend all persons suspected, and bring them before him; this was ruled a void warrant, *Pasch. 24 Car. 1.* in the case of justice *Swallowe*, and was held not to be a sufficient justification in false imprisonment.

And in case of a complaint on oath of goods stolen, and that he suspects the goods are in such a house, and shews the cause of suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods, and the party in whose custody they are found, to give an account how he came by them. *Dalt.* 353.

And

And this is warrantable by law, without which Felons could not, in many cases, be discovered; and this is the constant practise at this day, notwithstanding the opinion of lord *Coke*, in his *Jurisdiction of courts*, p. 176.

There can be no breaking open of doors to make a search, but he must enter *per Ostia aperta*; and the reason is, because the bare having of stolen goods in his house doth not necessarily make a man either a felon or accessory; but because the having of stolen goods in his custody is an evidence of a felony, and a good cause of suspicion; and the goods found ought not to be delivered to the party complaining, but to remain in the constable's hands, till either by a writ of restitution upon the conviction, or by due order of the court they be delivered. But the general warrant to search all places whereof the party and officer have suspicion, though it hath been usual, yet it is not safe, upon the reason of justice *Swallow's* case before recited.

Where a justice's warrant is lawful, any contempt to it by throwing it in the dirt, &c. may be punished by fine on indictment. *Crompton* 149.

Taking money or reward, under pretence of helping any person to any stolen Goods, unless he apprehend such felon, and bring him to trial; and give evidence against him, guilty of felony, as if he had stolen the goods. *Stat. 4 G. 1. c. 11. 6 G. 2. c. 23.*

If any justice sends his warrant to a constable, to bring one before him to answer all such matters as shall be objected against him
by

by J. D. and doth not set forth the special Matter in the warrant, such warrant is unlawful, because it does not appear, whether it be within the jurisdiction of the justice, and because it does not give the offender time to find sureties; therefore the officer is liable to an action of false imprisonment, if he executes it; though such warrants have been commonly issued forth. 10 Rep. 76. 3 Cro. 339. 2 Inst. 591. 5 Rep. 59.

A warrant for robbing lodgings.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } THESE are in his majesty's
to wit, } I name to command you and every of you, upon sight hereof, to take and bring before me, or some other of his majesty's justices of the peace for the said county, the body of M. S. and M. his wife, of whom you shall have notice, to answer all such matters and things, as on his majesty's behalf are on oath objected against them by G. J. on a violent suspicion of having feloniously taken away, with an intent to steal or purloin one quilt, one blanket, (*as the same is, naming the particulars*) let to be enjoyed with their ready-furnished lodgings, contrary to the statute in this case made and provided: hereof fail not at your peril. Given under my hand and seal this 30th day of December in the year of our Lord 1751.

Stat. 3 & 4 W. 3. c. 9.

Warrant

*Warrant against a person running away
from his wife, &c.*

*To all constables, and others his majesty's officers
of the peace for the said county.*

Middlesex, } **T**HESE are in his majesty's
to wit, } name to command you and
every of you, upon sight hereof, to take
and bring before me, or some other of his
majesty's justices of the peace for the said
county, the body of *T. A.* of whom you
shall have notice, to answer to all such mat-
ters and things, as on his majesty's behalf
are on oath objected against him by *W. F.*
one of the overseers of the poor of the pa-
rish of *St. J. C.* in the county of *Middlesex*,
for running away from and leaving his wife
S. A. chargeable to the said parish, contrary
to the statute in such case made and provided,
and in breach of his majesty's peace: hereof
fail not at your peril. Given under my hand
and seal this 2d day of *March* in the year of
our Lord 1751.

Stat. 9 G. 1. c. 8.

See Settlements.

A warrant

A warrant for apprehending one for getting a woman with child, before its birth.

To all constables, headboroughs, and others his majesty's officers of the peace for the said county.

Middlesex, } **W**HEREAS *Amy Arnold* of
to wit, } the parish of *St. Mary, Islington*, single woman, in her examination taken this day in writing, and upon oath before me, one of his majesty's justices of the peace in and for the said county, hath voluntarily declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of *St. Mary, Islington*; and the said *A. A.* hath in her said examination charged one *J. T.* servant to *Mr. R. H. of C.* in the said county, with having begotten the said child on her body, with which she is now pregnant: and whereas *J. W.* overseer of the poor of the said parish of *St. Mary, Islington*, hath made application unto me for immediate apprehending the said *J. T.* to answer the premisses: These are therefore in his majesty's name to authorize and require you, and every of you, to apprehend the said *J. T.* and bring him before me, or some other of his majesty's justices of the peace for this county, that he may be proceeded against as the law directs. Given under my hand and seal this 17th day of *December 1751.*

The

The above warrant has been the usual method; but the common warrant may be as effectual, *only saying*, It was on the application of the overseer or overseers of the poor of the parish of *St. M. I. &c.* on the voluntary examination of *A. A.*

The examination of A. A.

Middlesex, } *AMY ARNOLD*, single woman, voluntarily maketh oath, that living a servant with Mr. B. who keeps the *George inn* at *Caldecot* in the county of *Hertford*, she became familiarly acquainted with one *J. T.* servant to Mr. R. H. who lodged at the said inn; that the said *J. T.* had carnal knowledge of her body several times in the said inn, at one of which times he begot her with child, of which she is now pregnant, and about three months of her reckoning to come: and she further saith upon her oath, that the said *J. T.* is the only true father of the said child or children she is now pregnant with, and no person else whatsoever; that she is informed that the said *J. T.* now lives with the said Mr. H. in *Coney court, Gray's inn.*

Sworn the 17th day
of Decemb. 1751,
before me

R. C.

The mark of
Amy + Arnold.

Warrant on the application of the overseers of the poor, concerning a bastard child.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } **T**HESE are in his majesty's
to wit, } name to command you and
 every of you, upon sight hereof, to take and
 bring before me, or some other of his majesty's
 justices of the peace for the said county,
 the body of *J. Scofield* (of whom you shall
 have notice) to answer to all such matters
 and things, as on his majesty's behalf are
 objected against him by the churchwardens
 and overseers of the poor of the parish of *St.*
James Clerkenwell in the said county, for un-
 lawfully begetting one *Sarah Wells*, spinster,
 with child of a bastard now born, chargeable
 to the parish. (*But if not delivered, then say*)
 Of a bastard child or children wherewith she
 is now pregnant, which is likely to become
 chargeable to the parish, as appears to me
 on the voluntary examination of the said *Sa-*
rah Wells, taken this day in writing and upon
 oath before me: hereof fail not at your peril.
 Given under my hand and seal this 8th day
 of *July* in the year of our Lord 1751.

The oath of the churchwardens, &c. need
 not be.

See **Bastards.**

Though

Though for treason, felony, &c. it is not necessary to mention the crime, yet it is best to express the cause; otherwise, if the prisoner escape, it is no offence; but if the cause be set forth to be for felony, &c. then a voluntary escape will be felony in the officer, though the prisoner be not guilty of the felony, &c.

Warrant against a person for unlawfully departing from his service before he finished his work.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } THESE are in his majesty's
to wit, } name to command you and every of you, upon sight hereof, to take and bring before me, or some other of his majesty's justices of the peace for the said county, the body of *H.O.* (of whom you shall have notice) to answer to all such matters and things, as on his majesty's behalf are on oath objected against him by *C. E.* for unlawfully departing from the service of the said *C. E.* having work delivered at a certain price to be wrought, and departing before the same was finished, as was agreed upon for certain prices to be paid for such goods, when manufactured, against the statute in such case made and provided: hereof fail not at your peril. Given under my hand and seal this 3d day of *Decem.* in the year of our Lord 1751.

Stat. 5 Eliz. c. 4.

F f 2

Summons

Summons warrant for a disorderly apprentice, according to the stat. 20 G. 2.

To all constables, and others his majesty's officers of the peace for the said county, whom these may concern.

Middlesex, } THESE are in his majesty's
to wit, } name to command you
forthwith, upon sight hereof, to summons
J. L. (of whom you shall have notice) personally to be and appear before us, two of his majesty's justices of the peace for the said county, to answer the complaint of A. B. his master, for being an idle, disorderly apprentice, absenting himself from his master's service without leave or consent, and threatening his said master's life, contrary to the statute in that case made and provided: hereof fail not at your peril. Given under our hands and seals this 3d day of January 1751.

The stat. 20 G. 2. says, that any apprentice put out by the parish, or any other apprentice, upon whose binding no more than 5*l.* was paid, touching any misusage, &c. any two justices may summon such master, &c. The apprentice the like liberty.

See Apprentices.

Warrant

*Warrant to levy the penalty of 5 s. for
exposing to sale goods on a Sunday.*

To the constable of J. in the county aforesaid.

Middlesex, } **W**HEREAS it hath been
to wit, } duly proved before me,
that J. S. of L. aforesaid, did on *Sunday* the
9th day of ——— last past, expose apples,
&c. to sale in your said parish, contrary to
the statute in such case made and provided,
whereby he or she (*as the case shall be*) hath
forfeited the said goods to the use of the poor
of the said parish of, &c. These are there-
fore in his majesty's name to require and au-
thorize you forthwith to seize the goods so
exposed to sale as aforesaid, and that you
sell the same, and imploy the money arising
by such sale to the use of the poor of your
said parish; and hereof fail not at your pe-
ril. Given under my hand and seal the 12th
day of ——— 1751.

Stat. 29 Car. 2. c. 7. one justice and one
witness; the prosecution to be in ten days,
forfeits the goods, and 5 s.

See Drovers.

Warrant to levy the penalty on one for being drunk, or to be set in the stocks.

To the constables of the parish of C. in the said county.

Middlesex, } **W**HEREAS *R. C.* of the
to wit, } said parish of *C.* yeoman,
 was this day convicted before me, one of his
 majesty's justices of the peace for the said
 county, of being drunk on the third day of
J. in the parish of *C.* aforesaid: These are
 therefore to require and authorize you, and
 either of you, to demand 5*s.* of the said *R. C.*
 as the penalty for his said offence, for the use
 of the poor of the said parish of *C.* And if
 he shall refuse or neglect to pay the same for
 the space of a week next after your demand,
 then you are to levy the same for the use
 aforesaid, by distress and sale of his goods,
 returning to him the overplus; but for want
 of sufficient distress, you are to set him in the
 stocks for six hours. Given under my hand
 and seal this 21st day of *June* 1751.

Stat. 4 *Jac.* 1. c. 5. view, one witness, or
 confession; second offence, to be bound with
 two sureties in 10*l.* to the good behaviour.

Where sureties are required, the warrant
 ought to contain the special cause whereupon
 it is granted. *Palmer's Rep.* 558.

*Warrant to levy 3 s. 4 d. for assembling to
use sports on a Sunday.*

To the constables of, &c.

Middlesex, } **W**HEREAS T. P. L. F.
to wit, } &c. all of the parish of
ŷ. have been lawfully convicted before me,
that they, and each of them, did on the 20th
day of *February* last past, being the Lord's
day, assemble to exercise unlawful sports on
that day, contrary to the law in that case
made and provided, by which each of them
hath forfeited 3 s. 4 d. for the use of the poor
of the said parish of ŷ. These are therefore to
require you forthwith to levy the respective
forfeitures of 3 s. 4 d. as aforesaid, on the sever-
al goods and chattels of each of the said of-
fenders, by distress and sale thereof; and for
want of such distress, that then you cause
such of the said person or persons to be set
publickly in the stocks by the space of two
hours; and you are likewise to imploy the
money by you received for the said forfei-
ture, to the use of the poor of the said pa-
rish of, &c. Given under my hand and seal
the 24th day of *April* 1751.

Stat. 1 Car. 1. before one justice, and one
witness.

The like warrant, *mutatis mutandis*, for
exercising a trade on a *Sunday*, and the for-
feiture of 5 s. Higler the same. Prosecu-
tion within six months.

F f 4

Justice

Justice may reward the prosecutor with a third part. 3 Car. 1. c. 2.

Butcher killing or selling any victuals upon the Lord's day forfeits 6s. 8d. to be levied by distress; one third to the informer, the rest to the poor of the parish. 3 Car. 1.

Common warrants.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } THESE are in his majesty's
to wit, } name to command you and
every of you, upon sight hereof, to take and
bring before me, or some other of his majesty's justices of the peace for the said county, the body of *H. H.* of whom you shall have notice, to answer to all such matters and things, as on his majesty's behalf are on oath objected against him by *S. H.* for assaulting, beating and bruising her, against the peace, &c. (*or as the case shall be*): hereof fail not at your peril. Given under my hand and seal this 23d day of *September* in the year of our Lord 1751.

N. B. All warrants must conclude, *against the peace.*

Warrant

Warrant to apprehend a person for felony.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } **T**HESE are in his majesty's
to wit, } name to command you and
every of you, upon sight hereof, to take and
bring before me, or some other of his majesty's
justices of the peace for the said county,
the bodies of *J. W.* and *S. N.* of whom you
shall have notice, to answer all such matters
and things, as on his majesty's behalf are on
oath objected against them by *O. G.* for as-
saulting him on the highway, and putting
him in fear, and feloniously robbing him of
so much money (*or as the case shall be*) the
property of the said *O. G.* (*Or if for steal-*
ing a man's money out of his house, then say)
On a violent suspicion of feloniously stealing
six guineas in gold out of the house of the said
O. G. the lawful coin of this kingdom, the pro-
perty of the said *O. G.* (*If for a rape, then*
say) Did feloniously ravish and carnally know
the said *J. B.* against the peace, and against
the statute: hereof fail not at your peril. Gi-
ven under my hand and seal this 23d day of
September in the year of our Lord 1751.

A man must be put in fear, else no robbery. *Dyer 224.*

And by the common law something must be taken, else no robbery.

Warrant

*Warrant for undertaking to produce a
stolen watch without producing the thief.*

*To all constables, and others his majesty's officers
of the peace for the said county.*

Stat. 4 G. 1.
Stat. 6 G. 1.

Middlesex, } THESE are in his majesty's
to wit, } name to command you and
every of you, upon sight hereof, to take and
bring before me, or some other of his majesty's
justices of the peace for the said county, the
body of J. L. of whom you shall have notice,
to answer to all such matters and things, as on
his majesty's behalf are on oath objected against
him by W. R. for feloniously undertaking to produce
a stolen watch without producing the thief, against
the peace, and against the form of the statute, &c.
Hereof fail not at your peril. Given under my
hand and seal this 23d day of September in the
year of our Lord 1751.

A warrant against a disorderly apprentice.

*To all constables, and others his majesty's officers
of the peace for the said county.*

Middlesex, } THESE are therefore in his
to wit, } majesty's name to command
you and every of you, upon sight hereof, to
take and bring before me, or some other of
his majesty's justices of the peace for the
said county, the body of S. O. of whom you
shall have notice, to answer to all such mat-
ters

ters and things, as on his majesty's behalf are on oath objected against him by J. D. his master, for being an idle, disorderly apprentice, absenting himself from his said master's service, day and night, without his leave and consent. (*The same warrant may serve for the apprentice against the master, by adding these words*) For that the said J. D. doth not allow unto his said apprentice sufficient meat, drink and apparel, but hath also immoderately corrected him without just cause, &c. (*as the case shall appear to be*): Hereof fail not at your peril. Given under my hand and seal this 24th day of September in the year of our Lord 1751.

If a master turns away his apprentice, whereby he is likely to become chargeable to the parish, upon complaint of the churchwardens the justices may order the master to take him again, and the remedy must be by indictment. *Cumberbatch 405. B. R.*

In discharging apprentices the practice now is, for one justice to bind over the master, at the complaint of the apprentice, to the next sessions, and then four justices to discharge him under their hands and seals. And upon complaint of the master against the apprentice, to send the apprentice to the house of correction, if he will not agree to appear at the quarter-sessions; and at the sessions such order is to be made under the hands and seals of four justices, as is just.

Justices have no express power to discharge an apprentice, if the fault be in him, as they have, if the fault be in the master;
and

and they cannot punish a bad master, though they may discharge the apprentice; and they may either punish or discharge a bad apprentice, as they shall think fit.

Apprentice striking his master may be sent to the house of correction; and a master may justify striking his apprentice.

The sessions have nothing to do concerning an apprentice, before it comes before a private justice.

The assignment of an apprentice, even though with his consent, will not make him an apprentice to an assignee, within *5 Eliz. c. 4.* But in *London* the custom is otherwise.

For although an apprentice is not assignable, yet the assignment is not void, but shall amount to a contract between the masters, that the apprentice shall serve his last master; and it is good by way of covenant, though not to pass an interest. *Trin. 3 G. 1. 1 Mod. cases 190. Salk. 68.*

But now by the stat. 20 G. 2. on the complaint of any apprentice put out by the parish, or any other apprentice, upon whose binding no more than *5l.* was paid, touching any misusage, refusal of necessary provision, cruelty, or other treatment towards such apprentice by his master or mistress, any two justices may summon such master or mistress to appear before them, and may examine the complaint; on proof thereof, upon oath (whether the master or mistress be present or not, if the service of the summons be also proved) may discharge such apprentice by warrant or certificate under their hands and seals; for which warrant or certificate no fee shall

shall be taken. And such justices, upon complaint on oath by any master or mistress against such apprentice, touching any misdemeanor, &c. (Stat. 20 G. 2. c. 19.) may determine the same, and punish the offender by commitment to the house of correction, there to be corrected by hard labour, not exceeding a calendar month, or by discharging such apprentice.

A warrant for the peace.

To all constables, and others his majesty's officers of the peace whom these may concern.

Middlesex, } **T**HESE are in his majesty's
to wit, } name to command you, and every of you, upon sight hereof, to take and bring before me, or some other of his majesty's justices of the peace for the said county, the body of *J. L.* (of whom you shall have notice) to find sufficient securities, as well for his appearance at the next general sessions of the peace to be holden for the said county, as also in the mean time to keep the peace as well towards his said majesty, as all his liege people, and especially towards *F. S.* for that he hath taken his corporal oath before me this day, that he goeth in danger of his life, or of some bodily harm, that he the said *J. L.* will do, or cause to be done unto him: And hereof fail not at your peril. Given under my hand and seal this 25th day of *September* in the year of our Lord 1751.

The

The common warrant first set forth may answer all occasions, only changing when you come to the words, are on oath objected against him or her by S. H. for assaulting, beating, &c. (or as the case shall be. Or if for felony, then say) for feloniously assaulting him on the highway, and putting him in fear, and taking from him so much money, or on a suspicion of stealing from the person of the said S. H. such and such things, &c. naming them.

Summons warrant.

To all constables, and others his majesty's officers of the peace for the said county, whom these may concern.

Middlesex, } **T**HESE are in his majesty's
to wit, } name to command you
forthwith, upon sight hereof, to summons
J. W. (of whom you shall have Notice) personally to be and appear before me, one of his majesty's justices of the peace for the said county, to answer the complaint of R. H. for assaulting and beating him, or that he goes in danger of his life, (*or as the case shall be*): Hereof fail not at your peril. Given under my hand and seal this 20th Day of September in the year of our Lord 1751.

Warrant

*Warrant to assess and levy the money for
a contribution, being recovered against
the hundred, and levied on two men.*

To the high constables of the hundred of C.

Middlesex, } **W**HEREAS R. L. of B. in
to wit, } the said county, gentle-
man, was lately robbed of 50*l.* in the
hundred of C. and hath since obtained a
judgment at law against the inhabitants
thereof, which said sum of 50*l.* hath been
levied and charged only on J. S. and T. P.
two of the inhabitants of H. within the said
hundred, who have now made complaint
thereof to us: And whereas we have caused
a rate or assessment to be made upon the
parishes and villages within the said hundred,
for raising the said money, pursuant to the
statute in that case made and provided, which
said rate is hereunto annexed; These are
therefore, in his majesty's name, to require
and authorize you the said high constable
forthwith to give notice thereof to the petty
constables and headboroughs, immediately
after such notice equally to set and impose
upon the several inhabitants of the said pa-
rishes the respective sums therein rated, ac-
cording to their method of rating for the
poor of the said parish, and afterwards to
demand the same, and to levy it by distress
and sale of the goods of such of the said in-
habitants respectively, who shall refuse to pay
the sum on him or them set or imposed;
and having received and levied the same,
that

that you do within eight days pay it unto the sheriff of the said county, for the use of the plaintiffs, that the said J. S. and T. P. may be reimbursed; and you are further to give an account unto us within ten days next after the date hereof, what you shall have done in the premisses: And hereof fail not. Given under our hands and seals this 25th day of September 1753.

27 Eliz. c. 13. two justices. Stat. 8 G. 2. c. 10. and see *Examinations, &c. Robbery, &c.*

The form of the rate.

Middlesex, } **A** RATE made by R. B. and
to wit. } G. F. two of his majesty's
justices of the peace for the said county, for
raising of 50*l.* on the hundred of C. which
said hundred is charged with the said sum,
and the same hath been levied upon J. S. and
T. P. two of the inhabitants thereof, by vir-
tue of a judgment had and obtained by R. L.
against the said hundred, for a robbery done
and committed therein.

	<i>l.</i>
The parish of H.	5
The parish of B.	6
The parish of R.	8
The parish of C.	10
The parish of N.	7
The parish of L.	10
The parish of T. &c.	4

Warrant

Warrant to apprehend one suspected of a felony and robbery, and make hue and cry after him.

To all constables, and other his majesty's officers as well within the county of M. as elsewhere within the realm of England.

Middlesex, } **W**HEREAS oath hath been
to wit, } duly made before me,
 one of his majesty's justices of the peace
 within the said county, by J. S. of F. in the
 said county, gentleman, that upon *Monday*
 last, being the 17th of this instant *April*, he
 the said J. F. was robbed of (*here mention the*
things) amounting in the whole to the value
 of 200 l. taken out of his dwelling-house in
 S. aforesaid, and that he hath manifest cause
 to suspect J. B. of W. in the said county,
 baker, being a fair man in a white bob wig,
 well set, and about five feet six inches high,
 with a wide mouth and a *Roman* nose, to
 have robbed him of the same goods and
 money: These are therefore in his majesty's
 name to require and authorize you, and every
 of you, to make diligent search within your
 severall and respective divisions and precincts
 for the said J. B. And also make hue and
 cry after him from town to town, and from
 county to county, and that as well by horse-
 men as by footmen; and if you shall find the
 said J. B. that you take him and carry him
 before some one of the justices of the peace
 within the county, city or borough where he
 shall be taken, to be dealt with according to

G g

law:

law: And hereof fail not. Given under my hand and seal the day of *April* 1753.

Stat. of Westminster 1. c. 9. 3 *Ed. 1.* *Stat. Winchester* c. 1. 13 *Ed. 1.* 27 *Eliz. c. 13.*

Before the justice grant such warrant, he must take the examination in writing of the party robbed; for which see *Examination*, p. 82.

That from and after the 24th day of *June* 1753, no act, order, adjudication, warrant, indenture of apprenticeship or other instrument already made, done or executed, or hereafter to be made by two or more of the justices, which doth not express that one or more of the justices is or are of the *quorum*, shall impeach, set aside or vacate for that defect only. *Stat. 26 G. 2.*

All fines and amerciaments that are in the justices discretion must be reasonable, having regard to the offence. 31 *Ed. 4. c. 3.* *Magna charta* 9 *H. 3. c. 14.*

Warrant for hue and cry after highwaymen.

To all constables, and others his majesty's officers, as well within the county of M. as elsewhere within the realm of Great Britain.

Middlesex, } **W**HEREAS complaint
to wit, } upon oath hath been
made unto me, one of his majesty's justices
of the peace within the said county, by *J. F.*
of *S.* in the said county, gentleman, that
upon

bles in all and every the precincts within your hundred, requiring them to make true and faithful presentment at the next general quarter-sessions of the peace, to be holden for this county at, &c. on, &c. of all and every the offences committed in their several limits, which they are by their oaths obliged to inquire into, viz. affrays, bloodsheds, &c. (*here set forth the particulars*) and that you do then and there appear at the said general quarter-sessions, to make return of this warrant, and do herein, as the acts of parliament direct: Hereof fail not at your peril. Given under our hands this day of 1753.

The high constable's precept to the petty constables, to make such presentment.

Middlesex, } BY virtue of a warrant to me
to wit, } directed from R. C. and J. H.
 esqrs. justices of the peace for the said county, these are to charge and require you to make your personal appearance at the general quarter sessions of the peace, to be holden at, &c. on, &c. next for this county, and bring with you thither, fairly written, all your presentments of treasons, felonies, murders, robberies, thefts, riots, routs, bloodsheds, rescues, hues and cries not prosecuted, gaming-houses, drunkenness, forestallers, cottages erected against the statute, bridges and highways out of repair, common nuisances, bawdy-houses, disturbers of the peace, ale-house keepers unlicensed, and disorders in ale-houses, false weights and measures, watches and wards
 not

not kept, and generally all manner of trespasses and offences whatsoever inquirable by you, and committed within your precincts, to the end the offenders may be proceeded against according to law. Given under my hand this day of 1753.

The presentment of A. B. constable of, &c. in the county of, &c. made at the general quarter-sessions of the peace held for the said county, the day of, &c.

The form of the constable's presentment.

THE said *A. B.* says and presents upon his oath, that *C. D.* of the parish of, &c. in the said county, does at this time keep, and has for the space of one month past kept, an unlawful gaming-house in the parish of, &c. viz. he has permitted servants, apprentices, &c. to play at cards, dice and other games prohibited by law, to the great encouragement of vice, and disturbance of the neighbourhood there.

The said *A. B.* likewise presents upon his oath, that *E. F.* of the said parish of, &c. has lately carried out stinking carcases and other filth into the highways, which is a common nuisance to the parish, and an annoyance to travellers.

The said *A. B.* also presents *G. H.* to be a common disturber of the peace.

Warrant to make a privy search.

*To the chief constable of the hundred of C.
in the said county, and to either of them.*

Middlesex, } THESE are in his majesty's
to wit, } name to require and author-
ize you to call to your assistance some suffi-
cient men of your neighbourhood, and that
one night before the 10th of this instant *May*
you make a privy search in all suspicious
places within your precinct, to find out and
apprehend rogues, vagabonds and other sus-
picious persons there, and that you cause
such as you shall so find, to be brought be-
fore us whose hands and seals are hereunto
set, two of his majesty's justices of the peace
for the said county, at the house of J. C. of
in the said county, on *Thursday* the
10th of *May* aforesaid, to be examined and
punished as we shall cause; and that you ap-
pear there likewise to give an account touch-
ing the premisses. Given under our hands
and seals the day of 1753.

7 Jac. 1. c. 4.

The case of *Freeman* alias *Talbot*—She was committed by several justices of the peace, being taken up upon a general privy search, and charged on oath to be a loose, idle and disorderly person; and the commitment required her to be kept to hard labour till the first day of next quarter-sessions; and upon consideration of all the statutes relating to this matter, which are 39 *Eliz.* 1 *Jac.* 13 &

14 Car. 2. 4 & 12 W. 3. 1 Ann. the commitment held good. B. R. 2 Strange's Rep. 882.

The high constable's warrant to make a privy search.

BY virtue of a warrant to me directed from R. C. and J. H. esquires, two of his majesty's justices of the peace for this county, acting within the hundred of, &c. aforesaid, these are to command you to make diligent search and inquiry within your precincts upon next, in the night-time, after rogues, vagabonds and sturdy beggars, and all such persons as are suspected to keep bawdy-houses, and the frequenters thereof, and also all disturbers of the peace, &c. and to apprehend them and bring them before, &c. upon *Thursday* next by ten of the clock in the forenoon, to be dealt with according to law: Hereof fail not. Dated, &c.

A high constable's precept to petty constables, to prepare lists of jurors.

BY virtue of a warrant from, &c. justices of the peace, at the general quarter-sessions held for the county of *Middlesex* at, &c. on, &c. last past, these are to require you to make and prepare a sufficient list of persons qualified to serve on juries, viz. of the names and places of habitation of persons between the age of twenty-one and seventy, having 80*l.* per annum, to serve on the grand jury,

and of those as have 10*l.* *per annum* freehold, to serve on the petty jury (aliens, infants, attornies, apothecaries, clergymen, conspirators or persons attainted excepted) and that you make a return of the said list at the next general quarter-sessions (*Michaelmas*) to be held for the county. Given, &c.

A warrant from a high constable to a petty constable, to levy gaol money.

Middlesex, } **BY** virtue of a warrant to me
to wit, } directed by his majesty's justices of the peace assembled at the general quarter-sessions held at, &c. for this county, I do hereby require you to levy of all and every the inhabitants in your parish the sum of, &c. towards the reparation of the county gaol; which said sum is thought fit by the justices aforesaid to be raised in your parish by an equal taxation; and if any person shall refuse to pay his or their parts of the said tax four days after demanded, that then you do levy the same by distress and sale of their and either of their respective goods and chattels within a further space of four days, returning the overplus, after deducting the charges of the distress, to the owner. Given under my hand, &c.

See the new stat. 12 G. 2. c. 29. and 13 G. 2. c. 18.

A warrant

A warrant to distrain for a church rate.

To the churchwardens of the parish of, &c.

Middlesex, } **W**HEREAS complaint hath
to wit, } been made unto us by
J. L. and M. N. of, &c. churchwardens of
the said parish, that *F. G. H. I. &c.* have re-
fused or neglected to pay the sums of money
by legal assessment rated on them for and to-
wards the reparation of the parish church of,
&c. aforesaid, viz. the said *F. G.* the sum of,
&c. and the said *H. I.* the sum of, &c.
These are therefore in his majesty's name to
command you, that you or any of you do
levy the said several and respective sums of,
&c. by distress and sale of the goods of the
said *F. G.* and *H. I.* respectively, rendring to
them the overplus, if any be, unless such
sums, together with the reasonable charges
of taking, keeping and selling the same, be
paid within days, pursuant to the statute:
and in case there be no goods whereof a suf-
ficient distress may be taken, that then you
do certify the same to us, that such further
proceedings may be had as to justice apper-
tains. Given under our hands and seals this
day of 1753.

Houses as well as lands are chargeable to
those rates; and if a parish is unequally ra-
ted, those who are grieved must plead it in
the spiritual court, being sued there. 2 *Roll.*
Abr. 291.

Stat.

Stat. 27 G. 2. says, not above eight days,
nor under four days.

See Distresses.

*Warrant to grant a poor man a weekly
allowance.*

*To the overseers of the poor of the parish of,
&c. in the said county.*

Stat. 43 Eliz.
c. 2.
9 G. 1.

Middlesex, } **W**HEREAS complaint was
to wit, } made before me, one of
his majesty's justices of the peace for the said
county, by *A. B.* a poor man of the parish
of, &c. that he hath a family of small chil-
dren, and is not able to subsist them by his
labour, without the relief of the said parish:
and whereas I have summoned you the said
overseers of the poor of the said parish of,
&c. before me, to shew cause why the said
A. B. should not be relieved; and upon hear-
ing both parties it does appear to me, that
the said *A. B.* ought to be relieved by the
said parish: These are therefore in his maje-
sty's name to require and authorize you the
said overseers of the poor of the parish of,
&c. aforesaid, to pay unto the said *A. B.*
2s. 6d. a week, towards the subsistence of
himself and said family, so long as he shall
remain unable to provide for them. Given
under my hand and seal this day of
1753.

Warrant

Warrant to search for stolen goods.

To all constables, and others his majesty's officers of the peace for the said county.

Middlesex, } **W** H E R E A S complaint
to wit, } upon oath hath been this
day made before me, one of his majesty's
justices of the peace for the said county, by
W. R. that there was lately stolen from and
out of his house (*here name the particulars*)
and that there is just cause to suspect that the
said stolen goods, or some part thereof, are
concealed in the house, or in the lodging (*as
the case shall be*) of *E. F.* in the parish of *L.*
in the said county: These are therefore to
require you forthwith to make diligent search
in the day-time, in the house of the said *E. F.*
&c. abovementioned for the said stolen goods;
and if you find the same, or any part there-
of, that then you secure the said stolen goods,
and bring the person in whose custody you
find the same before me, or some other of
his majesty's justices of the peace for the said
county, to be examined and dealt with ac-
cording to law. Given under my hand and
seal the 17th day of *December* 1751.

Watch.

Watch.

CONSTABLES are to see that night-watches be kept from sun-set to sun-rising (in a city six men at every gate) who must be able persons, inhabitants of the place, and watch by turns. *Statute of Winchester, Ed. 1. c. 4.*

The vestries of the parishes are to meet once or twice a year, and chuse watchmen and beadles, appoint stands and wages, and allowances shall be made them, and may make orders for their better government, &c. Also vestries shall assess houses to defray the charge of watchmen, &c. not exceeding 4*d.* in the pound of the yearly value, and collectors to account, &c.

Watchmen are to apprehend all night-walkers, rogues, vagabonds, &c. and deliver them to the constable of the night, who shall carry them before a justice. *Stat. 8 G. 2. c. 15. Stat. 9 G. 2. c. 8.*

The like statute for regulating the nightly watch and beadles of the parish of *St. Andrew Holborn* and *Christ Church* in the county of *Middlesex*, as 9 G. 2. for other parishes within the liberty of *Westminster*, &c.

Trustees to be chosen by the inhabitants, and money may be raised by a pound rate, leviable by justices warrant. *Stat. 10 G. 2. c. 25. 11 G. 2. c. 35.*

Watch.

Watchmakers.

*Frauds and abuses committed by persons
employed in manufacturing of clocks
and watches.*

IF any person, after the 24th of May 1754, hired by any person in the trade of clock or watch making, shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock or watch, or any part thereof, or any gold, silver or other metal or materials, diamond or other precious stone, and shall be convicted by the oath of the owner or other credible witnesses, or by confession before any justice for the county where the offence shall be committed, or where the offender shall reside, shall forfeit 20*l.* for the first offence; and if the same be not forthwith paid, shall be committed to the house of correction or other publick prison, to be kept to hard labour for fourteen days, unless the forfeiture be sooner paid; and if within two days before the expiration of the said term the forfeiture shall not be paid, the justice shall order him to be publickly whipt: and if convicted a second or other subsequent offence of the same kind, shall forfeit 40*l.* and the same not being paid forthwith, shall be committed to hard labour not exceeding three months, nor less than one, except the forfeiture be sooner paid; and if not paid within seven days before the expiration of the said time, to be publickly whipt
twice

twice or oftener, as the justice shall think reasonable.

If any person shall be convicted of buying, receiving, accepting, or taking by way of gift, pawn, pledge, sale, exchange, or any other manner, any of the goods or effects aforesaid (whether the same be wrought or manufactured or not) or a diamond or other precious stone, knowing the same to be purloined, shall forfeit 20*l.* for the first offence; and if the same shall not be forthwith paid, shall be committed to the house of correction to hard labour for fourteen days; and if it shall not be paid within two days before the expiration of the said term, the said justice shall order him, at his discretion, to be publicly whipt once or oftener: in case of a second or other subsequent offence, shall forfeit 40*l.* and be committed to hard labour for three months, nor less than one, unless the forfeiture be sooner paid; and if not paid within seven days before the expiration of such time, the justice shall order him to be publicly whipt twice or oftener.

The respective forfeitures, after satisfaction made thereout to the parties injured, with cost of the prosecution, as the justice shall judge reasonable, shall be applied to the use of the poor of the parish where the offender shall reside or inhabit.

Persons convicted in any of the cases aforesaid, may appeal to the justices the next general or quarter sessions for the county where judgment shall have been given; in which case execution of the said judgment shall be suspended, the party entering into a recognizance

nizance with two sureties, in double the sum he shall be adjudged to forfeit, with condition to prosecute with effect, and to abide the judgment of the justices at the said sessions; and if the former judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to forfeit with such costs, as the justices shall award, or in default shall suffer the respective pains and penalties aforesaid.

The justice before whom any person shall be convicted as aforesaid, shall cause the conviction to be drawn in the form and words following, *viz.*

BE it remembered, that on the day
of in the year of his
majesty's reign, *A. B.* was convicted before
me (*or us*) of his majesty's justices of
the peace for the said county of *or*
for the riding (*or division*) of the said
county of *or for the city, liberty or*
town of in the said county of
(*as the case shall be*) of purloining, imbezil-
ling, secreting, pawning, exchanging, or un-
lawfully disposing of, or of buying, recei-
ving, or taking to pawn (*as the case shall*
happen to be, specifying the respective goods,
materials or effects) the property of *C. D.* of
 in the county of Given
under my hand and seal (*or our hands and*
seals) the day and year aforesaid.

The said form and conviction shall not
be liable to be removed by *certiorari* into
the

the king's bench; and the conviction drawn up in the form aforesaid shall be written upon parchment, and transmitted by the justice to the next general or quarter sessions, to be filed, and kept amongst the records of the said court.

And if the judgment on such conviction shall be appealed from, the justices at their general or quarter sessions, upon receiving the said conviction, shall proceed as herein is directed.

Any justice, upon complaint on oath of any offence committed against this act within the same county or place, may issue his warrant for apprehending and bringing the offender before him, or any other justice for the county, &c. who shall hear and determine the said complaint, and proceed to conviction, and judgment thereupon. *Stat. 27 G. 2.*

No person shall export any outward or inward box, case, or dial plate for clock or watch, without the movement made fit for use, with the maker's name thereon; nor may any clock or watch, without putting their name and place of abode, or freedom, on every such clock or watch, on penalty of forfeiture of the goods, and 20*l.* *Stat. 9 & 10 W. 3. c. 28.*

Weights and measures.

Standards of weights and measures to be kept in market-towns.

IN every city, borough and market-town, In cities and boroughs to be common weights. a common balance shall be, with common weights sealed, and according to the standard of the exchequer, to be in the keeping of the mayor or constable of the city or borough, on pain of 10*l.* for such city, borough 5*l.* and market-town 40*s.* *Stat. 8 H. 6. c. 5.*

Measures and weights of brass are to be sent to every city and borough, and mayors and chief officers in cities and boroughs shall have a special mark for sealing of weights and measures, and take one penny for sealing a bushel, and a half-penny for every other; and for every hundred weight three half-pence, half hundred one penny, and every lesser weight a farthing; and if they refuse or delay to seal, shall forfeit 40*s.* Sealing any weight or measure not agreeable to the standard, or suffering persons to sell or buy by other measure, &c. incurs a forfeiture of 5*l.* *7 H. 7. c. 4.*

Mayors, &c. shall view all measures and weights once a year; break or burn those which are defective, and inflict a penalty of 6*s.* 8*d.* *Stat. 11 H. 7. c. 4.*

Constables may search and examine, if any person use other measures than such as are Constables to search for other measures. *Winchester* measure, and agreeable to the standard in the exchequer, and sealed, &c.

H h

and

Weights and measures.

and if they find any unsealed, may break them, and present the offenders at the next quarter-sessions. *Stat. 22 Car. 2. c. 8.*

Persons selling corn or salt by any bushel and measure not according to the standard, and struck even with the brim, forfeit 40s. and the corn. *Stat. 22 & 23 Car. 2. c. 12.*

If any baker shall make or expose to sale bread wanting an ounce of due weight, shall forfeit 5s. and wanting less than an ounce 2s. 6d. to be levied by a constable. *Stat. 1 G. 1. c. 25.*

Bakers selling their bread, consisting of peck, half-peck or quartern loaves, at a higher price than set by the lord mayor of London, or by the mayors, &c. of towns, or two justices of the peace, where there are no mayors, shall forfeit 10s. to the informer, to be levied by distress by constables, &c. *Stat. 3 G. 2. c. 29.*

Any one justice of the peace, mayor, &c. upon proof by the oath of one witness, that a man hath bought or sold by, or doth keep any other weight or measure, whereby any thing is bought or sold, than according to the standard, may send his warrant to the churchwardens and overseers of the poor of the place where the offence is committed, or one of them, to give them notice thereof, who are thereupon to levy, by distress and sale of goods, 5s. rendering the overplus; and if there be no distress, to commit the offender to prison till he pay the forfeiture.

Women.

IF a feme covert commits felony in company with her husband, it shall be presumed to be done by his command and coercion, and she shall be excused.

But it is otherwise where the wife steals goods alone without the knowledge of the husband, when it is felony in her.

Taking away any woman child under the age of sixteen years, and unmarried, out of the custody and against the will of the father, guardian, &c. the offender shall suffer fine and imprisonment. And an information shall lie for seducing a young man or a woman from their parents against their consents in order to marry them, &c. Stat. 4 & 5 P. & M. c. 8. Ray. 473.

To steal or take away any woman having an estate in Lands or goods, or that is her apparent against her will, and marry or defile her, is felony by the stat. 3 H. 7. c. 2. and it is the same if the taking be against her will though the marriage was with her consent, and not only the takers, but the procurers, abettors and receivers of the woman before the fact so taken away, knowing the same, shall be deemed principal felons. 39 Eliz. cap. 9.

By the stat. 26 G. 2. c. 33. no suit shall be had in any ecclesiastical court in order to compel a celebration of marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, Marriage of any person without consent of parents or guardians to be void.

or *per verba de futuro*, and the marriage of any person under the age of twenty-one years, without the consent of parents or guardians, shall be null and void.

Where any persons married do marry any other person, the former husband or wife being alive, it is felony. But if a husband or wife are abroad beyond the sea, &c. seven years, the one not knowing the other to be living, or there be a divorce of the husband and wife, &c. they are excepted out of the act; as the latter marriage makes this crime; if the first marriage were beyond the sea, and the second in *England*, the party may be indicted for it here, though if the first marriage be in *England*, and the latter beyond sea, the offender cannot be indicted there.

Stat. 1 Jac. 1. c. 11. Keil. 80. 1 Sid. 171.

All persons may lawfully marry, that are not near a-kin and prohibited by the levitical law, and the age of consenting thereto is fourteen years in the man, and twelve in the woman, if they marry before the ages they may disagree to it. *Danver's abridgment. See Rape, p. 143.*

**Woollen, cotton and linen manufacto-
ries.** See Servants.

Publick worship. See Churchwardens.

Wreck.

Wreck.

NOTHING shall be said wreck of the sea, but such goods only, which are ^{What shall be} deemed cast or left upon the land by the sea, and wreck. none of these words which are called flotsam, jetsam or ligan, are called wreck so long as they remain in or upon the sea; but if any of them be cast upon the land by the sea, then it is said to be wreck, and by the stat. 15 R. 2. c. 3. the lord high admiral shall not have conusance or jurisdiction of wreck of the sea, but of the other three he hath; for wreck is, when the goods are cast upon the land, and so within some county, whereof the common law may take conusance: but the other three are upon the sea. Wreck may by prescription belong to the lord of a manor, it was resolved, that the soil upon which the sea doth flow and reflow, viz. between high water mark and the low water mark, may be parcel of the manor of a subject. 16 Eliz. Dyer. And it was resolved, that when the sea doth flow and reflow, *ad plenitudinem maris*, the high admiral shall have jurisdiction of every thing done upon the water between the high water mark and the low water mark, as felony, &c. No proof is allowable by the law, but the verdict of twelve men. Part of the goods were wreck, and part not, and damages assessed intirely, *ergo* judgment was given for the defendant. The king shall have flotsam upon the sea, be-

cause within the ligeance of the king. *Sir Henry Constable's case*, 34 *Eliz. B. R. Co.* 5 *Rep.* 106.

Where a man, dog or cat escapes alive out of a ship, the same not to be adjudged a wreck, but the goods shall be saved and kept by the sheriff a year and a day for the owner, who shall have them restored to him, on proof made of being his. 3 *Ed. 1.*

Goods lost by piracy or tempest, and not by wreck, if they afterwards come to land, shall be restored to the owner. 27 *Ed. 3. cap.* 13.

The king to have wreck of the sea *per prærog' reg'.*

Taking goods of wreck before it is seiz'd by the owner no felony.

The taking of goods whereof no one had property at the time, is not felony, and therefore he that takes away a wreck before it is seized by the person who hath a right thereto, is not guilty of felony, but shall be punished by fine or the like. 1 *Hawk.* 93, 94. That is to say, he is not guilty of felony, by the common law, but it is otherwise by the stat. 12 *Ann. c.* 18.

Seizing wreck no felony.

Of preserving ships stranded.

Vessel stranded, justices command assistance to preserve her.

Where a vessel is stranded or run on shore, or in danger, justices of the peace, &c. are to command constables near the sea coasts to call assistants for preservation of ships, and officers of men of war are to be aiding and assisting under the penalty of 100 *l.* *Stat.* 12 *Ann.*

And

And by the stat. 26 G. 2. the said act of Stat. 26 G. 2. the 12 Ann. is required to be read in the church four times a year in all sea-port towns, and on the coast. And all justices, mayors, bailiffs, collectors of the customs, or chief constable, who shall be nearest to where any ship shall be stranded or cast away, shall forthwith give publick notice of a meeting to be held as soon as possible of the sheriff or his deputy, the justices of the peace, mayors, coroners, and commissioners of the land tax, or any five of them, who shall employ persons for saving the same, and shall command the constables nearest to the sea coasts to call together as many men as shall be thought necessary, to assist. And also the officers of excise shall be proper officers to put those acts in execution; and within the cinque ports, the lord warden, the lieutenant of *Dover castle*, the deputy warden of the cinque ports, the judge official and commissary of the court of admiralty of the cinque ports, shall put the same in execution there. And to prevent confusion and contradictory orders, the persons assembled to save any vessel, shall conform in the first place to the orders of the master, or other officer or owner, or persons employed by them, and for want of their presence or directions, then to the officers of the customs, next to the officers of excise, then of the sheriff or his deputy, then of the justices of the peace, then of a mayor, then of a coroner, then of a commissioner of the land-tax, then of a chief constable, then of a petit constable, and any person acting contrary to such orders, shall

to be read in churches four times in the year.

All justices, mayors, collectors of customs, constables, &c. shall employ persons for saving the ship, &c.

forfeit not exceeding 5*l.* to be levied by warrant of one justice, and in case of non-payment to be committed to the house of correction not exceeding three months.

Sheriff, justice,
mayor, &c.
what to have
for attendance
out of goods
saved.

Every sheriff, justice, mayor, coroner, lord of a manor, under sheriff or commissioner of the land-tax, shall have 4*s.* a day during his attendance, out of the goods saved.

If any person not impowered as above, shall enter on board such vessel, or shall deface the marks of the goods, he shall within twenty days make double satisfaction to the party grieved, at the discretion of the two next justices, or in default thereof, to be sent by them to the next house of correction, to be kept to hard labour for twelve months.

And if any person shall save any vessel, or goods, and shall cause them to be carried for the benefit of the owners into port, or any near adjoining custom-house, or place of safety, immediately giving notice thereof to a justice, magistrate, custom-house or excise officer, they shall be intitled to a reasonable reward for the same, to be adjusted by three neighbouring justices, to be recovered by action at law, or the same may be adjusted by the officers above mentioned; and if the salvage and charges of 4*s.* a day above mentioned, shall not be paid in forty days after the service performed, the officer of the customs concerned in the salvage, may borrow or raise so much money as shall pay the same, upon a bill or bills of sale under his hand and seal, of the vessel or cargo or part thereof,

re-

redeemable nevertheless on payment of the principal and interest at four *per cent.*

And if any person shall be assaulted and beaten or assaulted in salvage of any vessel or goods, the offender on conviction by indictment at the assizes or sessions, shall be transported for seven years, and such persons molesting the preservation of the ship, may be repelled by force.

If any person shall plunder, steal, take away, or destroy any goods belonging to such ship in distress, or which shall be wrecked or stranded (whether any living creature be on board or not) or any tackle, provision, or part of such ship, or shall beat or wound with intent to kill, or obstruct the escape of any person endeavouring to save his life from such ship, or the wreck thereof, or shall put out any false light with intent to bring any vessel into danger, he shall be guilty of felony without benefit of the clergy; but if goods of small value be stranded or cast on shore and stolen, without circumstances of cruelty, the offenders may be prosecuted for petit larceny only.

And if any person shall make a hole in any such ship, or wilfully do any thing tending to the immediate loss of such ship, shall be guilty of felony without benefit of clergy.

And if oath be made of such plunder or theft, the examination in writing taken, shall be delivered to the clerk of the peace, he shall cause the offender to be forthwith prosecuted, either in the county where the fact shall

shall be committed, or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor: and if committed in *Wales*, then it shall and may be carried on in the next adjoining *English* county, and the charges of such prosecution shall be paid by the treasurer of the county where the fact shall be committed, as the justices in sessions shall order; and if the clerk of the peace shall neglect his duty herein, shall forfeit 100 *l.* to him who shall sue for the same.

A justice of the peace, upon information on oath of any part of the effects of any vessel lost or stranded near the coast, being unlawfully conveyed or concealed, or some reasonable cause of suspicion thereof, may issue his warrant for searching, as in other cases of stolen goods.

And if the same be found in any house or place, or in the possession of any person not legally authorized to have the same, shall not immediately upon demand deliver the same, such justice, on proof of such refusal, shall commit him to the common gaol for six months, or till he shall have paid treble the value thereof.

Persons offering to sale goods unlawfully taken, may be seized.

If any person shall offer to sale any such goods unlawfully taken away, the person to whom offered, or any officer of the customs or excise, or constable, may seize the same, and shall with all convenient speed carry the same, or give notice thereof to one justice; and if such person shall not in ten days make out his property therein to the satisfaction of
such

such justice, they shall be delivered over to the rightful owner on payment of a reasonable reward (to be ascertained by the justice) to the seizer; and the justice may commit such offender to the common gaol for six months, or till he shall have paid the treble value: and if any person shall discover to any justice, magistrate, custom-house or excise officer, where any goods are wrongfully bought, sold or concealed, shall be intitled to a reasonable reward, to be adjusted as the salvage.

And the officer of the customs, who shall act in preserving any vessel or cargo, shall, as soon as conveniently may be, cause or procure persons belonging to the vessel, and others who can give any account thereof, to be examined on oath before a justice of the peace, as to the name or description of the vessel, the names of the master and owners, and of the places from or to which the vessel was bound, and the occasion of the distress, which examination the justice shall take in writing, and shall deliver a copy thereof to the said officer of the customs, who shall forthwith transmit the same to the secretary of the admiralty, who shall publish the same in the next *London Gazette*, or so much thereof as shall be necessary for the information of the persons interested or concerned therein. And if no person shall appear and claim the goods saved, the officer of the customs shall apply to three of the nearest justices, who shall put him or some other responsible person in possession, taking an account in writing

Officers of customs to procure persons belonging to the ship to be examined.

ting of the goods, to be signed by the said officer: and if they be not claimed in a year, they shall be sold (and if perishable shall be forthwith sold) and the money returned to the exchequer, till claimed by the owner.

But this shall not prejudice the right of any lords of manors or others lawfully claiming wreck or goods flotsam, jetsam or lagan. *Stat. 26 G. 2.*

Governors, &c. shall provide for mariners shipwrecked in foreign parts. *1 G. 2. c. 19.*

ADDENDA,

A D D E N D A,

Occasioned by acts made the last session
of parliament, viz. 29 Geo. 2.

Alehouses.

By the stat. 29 G. 2. c. 12. an additional duty of 20 s. is laid on all licences for selling ale, beer, or other exciseable liquors by retail; which duty is to be under the management of the commissioners for the stamp duties, who are to provide a new stamp for that purpose; and a penalty of 10 l. is laid on any person who shall make out a licence without such stamp, to be recovered as other penalties for offences against the stamp laws: and if any licence shall be made contrary to this act, there shall be paid to the king 5 l. over and above the said duty, and the licence shall not be available, until as well the said duty as the 5 l. be paid.

If any person licensed shall die, or remove from his house, wherein he was licensed, his executors, administrators or assigns, who shall
be

be possessed of such house, or the occupier thereof, may sell, ale, beer, &c. for the remainder of the term, without a certificate from a justice of the peace, or any new licence, notwithstanding stat. 26 G. 2. c. 31.

If any alehouse or victualling-house shall become empty or unoccupied after the general licensing day (the occupier whereof was licensed the preceding year) two justices at a petty sessions may grant a licence to any new tenant or occupier, till the next general licensing day, such licence being stamped as before directed, and such new tenant or occupier obtaining such certificate as by stat. 26 G. 2. c. 31.

Constables.

BY the stat. 29 G. 2. c. 25. eighty constables are to be yearly appointed for the city and liberty of *Westminster*, being artificers or persons using any trade of buying or selling (alehouse-keepers, victuallers, or persons retailing spirituous liquors only excepted.) None to serve as a constable above once in seven years; and none to serve as high constable there more than three years together.

Felony.

Felony.

BY the stat. 29 G. 2. c. 30. for the more effectual discouraging and preventing the stealing, and the buying and receiving of stolen lead, iron, copper, brass, bell metal and solder, and for more effectually bringing the offenders to justice, it is enacted, That the buyers or receivers of any of the said materials, knowing the same to be stolen or unlawfully come by, shall, on conviction, be transported for fourteen years, although the principal felon be not convicted. On a just cause of suspicion a justice may issue a search warrant, and the materials, and the party with whom the same are found, to be carried before two justices, and the party not giving a satisfactory account how he came by the same, or producing the party of whom he had the same, to be deemed guilty of a misdemeanor. Watchmen and other officers may apprehend any person who shall be reasonably suspected of having, carrying or conveying any of the said materials, at any time after sun setting, and before sun rising, and carry him before two justices of the peace; and if the person shall not give a satisfactory account how he came by the same, he shall be deemed guilty of a misdemeanor. In either of the two cases the materials shall be deposited with the churchwardens or overseers of the poor, and be advertised, and the owner proving his property shall have

have them again; otherwise they shall be divided between the officer and the poor of the parish.

Any person to whom any such materials shall be brought to be sold or pawned may, in any suspected case, stop and carry the party before a justice, and if he shall not do so, upon proof of a reasonable cause of suspicion, he shall be deemed guilty of a misdemeanor.

Persons deemed guilty of a misdemeanor in having in their possession, or carrying, conveying, &c. any of the said materials suspected to be stolen or unlawfully come by, and not giving a satisfactory account how they came by the same, or producing the party of whom they had the same, shall forfeit for the first offence 40 s. for the second offence 4 l. and for every subsequent offence 6 l. And being guilty of a misdemeanor in not carrying a suspected person before a justice, shall forfeit for the first offence 20 s. for the second offence 40 s. and for every subsequent offence 4 l. One moiety of the penalties to the informer, the other to the poor of the parish; to be levied by distress, and for want of distress, offender to be committed one month for the first offence, two months for the second offence, and until discharged by order of sessions for every subsequent offence.

Form of conviction.

Middlesex, } **B**E it remembered, that on the
to wit, } day of in the year
A. B. was convicted, before us

of the justices of the peace for the county, city, riding, division, liberty, or place aforesaid (*as the case shall be*) of a misdemeanor in having in his, her *or* their possession, lead, iron, copper, brass, bell metal or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he, she *or* they bought or received the same, nor giving a satisfactory account, how he, she *or* they came by the same; *or* in having, carrying or conveying of lead, iron, copper, brass, bell metal or solder, suspected to be stolen, or unlawfully come by, and not producing the party or parties, from whom he, she *or* they bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, *or* not giving a satisfactory account how he, she *or* they came by the same; *or* of neglecting to apprehend and secure the person or persons who brought and offered to pawn, sell or deliver lead, iron, copper, brass, bell metal or solder, suspected to be stolen, or unlawfully come by (*as the case shall be*).

Given under our hands and seals
the day and year aforesaid.

I i

A felon

A felon convicting the buyers or receivers of such stolen materials is intitled to the king's pardon; and convicting any of a misdemeanor in not apprehending one offering to sell or pawn any of the said materials, shall not be prosecuted for stealing such lead, iron, &c.

Plate, excise on it.

BY the stat. 29 G. 2. c. 14. it is enacted, That from and after 5 July 1756, there shall be raised, levied, collected and paid, for and upon all silver plate, the respective annual rates and duties therein after expressed, viz. for and upon 100 ounces troy weight, and any greater quantity of silver plate not amounting to 200 ounces, the sum of 5s. for 200, and not exceeding 300 ounces, 10s. (and in like manner 5s. for every 100 ounces, unto) for 4000 ounces and upwards, 10l. Which rates and duties shall be paid yearly by all persons and bodies politick or corporate, who on 5 July 1756, or afterwards, shall own, use, have, or keep any quantity of silver plate chargeable by the said act.

The said duty to be under the management of the commissioners of the excise.

All persons, &c. who on 5 July 1756 shall own, &c. any quantity of silver plate chargeable by the said act, within the limits of the chief

chief office of excise in *London*, shall within thirty days after 5 *July* 1756; and who after 5 *July* 1756 shall own, &c. any quantity of silver plate chargeable by the said act, within the said limits, shall within twenty days next after they shall begin to own, &c. any quantity of such silver plate, give notice, and make true entry in writing at the said chief office of their owning, &c. such silver plate, and of the number of ounces, wheresoever the same or any part thereof shall be kept, and of the parish or place where such persons shall respectively inhabit, or such bodies politick or corporate shall respectively be situate, distinguishing in such notice whether the same be given on their own account, or on whose account: and all persons, &c. who on 5 *July* 1756 shall own, &c. any quantity of silver plate chargeable by the said act in any other part of *Great Britain*, shall within forty days after 5 *July* 1756; and who after 5 *July* 1756 shall own, &c. any quantity of such silver plate, shall within twenty days next after they shall begin to own, &c. any quantity of such silver plate, give the like notice, and make the like entry at the office of excise next to the place where such persons shall respectively inhabit, or such bodies politick or corporate shall respectively be situate. The duty to be paid at the time of the entry, and be computed annually from 5 *July* 1756, or the time of beginning to own, &c. such silver plate.

Fresh notice to be given, and duty to be paid annually within thirty days after the commencement of each year.

20 *l.* penalty for not giving such notice, and making such entry, or concealing any quantity of silver plate with intent to defraud his majesty.

Fresh notice or entry not necessary for any new acquisition of plate within the year.

Persons, &c. not liable to prosecution, who shall make entry and payment before information laid.

Persons, &c. who shall *keep* and not *use* silver plate pledged or deposited with them by any other person, &c. are not liable to the duty.

But the *owners* of plate so pledged or deposited are liable to the duty.

Plate belonging to any place of religious worship, and stock in trade of any goldsmith, &c. is not liable to the duty.

But such goldsmith, &c. shall pay for plate *used* by him or in his family.

Persons having made entry, and paying, and dying within the year, the next immediate proprietors of such plate shall not be liable to the duty for the rest of the year.

Upon payment of the duty entry to be made by the officer, and receipt to be given containing the number of the register, the number of ounces, the sum paid, and time when paid.

Duty and forfeitures recoverable in the courts at *Westminster*, or exchequer in *Scotland*; or prosecutions for forfeitures and offences within the limits of the head office of excise in *London*, to be determined by commissioners of excise; in other places by two or more neighbouring justices, and either party

party may appeal to the quarter-sessions. The penalties to be levied by distress and sale of the offender's goods, and for want of distress (except in case of a body politick) the party to be imprisoned till satisfaction made. One moiety of the forfeitures goes to the crown, the other moiety to the informer.

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BY the stat. 29 G. 2. c. 17. if any subject shall agree to go beyond sea in order to enlist as a soldier in any foreign service, tho' no enlisting money be actually paid; or if any person shall engage or procure any subject to agree to go beyond sea in order to be enlisted in any foreign service, without his majesty's leave, tho' no enlisting money be actually paid, it is felony without benefit of clergy.

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F I N I S.

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[100]

The first of the year 1800

was a very dry one

and the crops were

very poor

the weather was

very hot

and the crops

were very poor

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